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OFFICE OF THE NATIONAL RECOVERY ADMINISTRATION

DIVISION OF REVIEW

THE PRISON LABOR PROBLEM UNDER NRA ADMINISTRATION AND THE PRISON COMPACT

By
Vernon J. Clarke

WORK MATERIALS NO. 40

N.R.A. ORGANIZATION STUDIES SECTION
February, 1936

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F O R E W O R D

This study of "The Prison Labor Problem under N.R.A. Administration and the Prison Compact" was prepared by Mr. Vernon J. Clarke of the NRA Organization Studies Section, Mr. William T. Bardsley in charge.

The study treats the experience of the National Recovery Administration with the problem, as brought before it by proposed code provisions, of the competition of prison made goods with the products of private industry. The detailed consideration given the subject is indicated by the Table of Contents and by the Summary immediately following the Table of Contents, which briefly sets forth the more important aspects of the N.R.A. experience, as found in succeeding chapters of the study. While this Summary contains some of the author's conclusions, the author's evaluation of the effect of NRA activities in dealing with the problem and his conclusions will be found in Chapter IX.

The primary purpose of mimeographing the study is that of making available to students of the subject and to administrative officials the experience of NRA. Accordingly, the documentation is rather full and detailed. It will be observed that the opinions stated and the recommendations made are expressive of the point of view of the author and are not to be regarded as official utterances. These opinions and recommendations are further material for examination and study.

At the back of this report will be found a brief statement of the studies undertaken by the Division of Review.

L. C. Marshall, Director
Division of Review

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SUMMARY

While most free industries of the United States were operating under Codes of Fair Competition approved under the National Industrial Recovery Act, the Compact of Fair Competition for the Prison Industries of the United States of America offered the most satisfactory means of placing prison made goods on the open market on a fair competitive basis with goods of free industries. For the first time in the history of this country free industry witnessed the sale of prison made goods on the open market under a voluntary agreement promulgated by the prison executives of the states. The purpose of this agreement was to maintain standards and price policies comparable to those of free industry.

After a study of free industry and the view points of prison executives and of benefits to the prisoners with respect to the subject of competition between prison goods and free industry goods, it was found that these groups were continually endeavoring to accomplish their objectives by propounding their theories and ideas to governors, legislatures and prison executives.

The relationship of the problem of prison goods versus free industry goods developed when an attempt was made by sponsors of the Codes for the Cotton Garment Manufacturing Industry, the Retail Trade, the Twine and Cordage Manufacturing Industry, the Farm Equipment Manufacturing Industry and others, to insert restrictive clauses into their respective codes which would do indirectly that which might not be accomplished directly, the objective being to prohibit members of these industries from handling or selling prison made products.

The Prison Executives of the states and representatives of the Bureau of Federal Prisons proposed a Code of Fair Competition to the President embodying the general principles contained in the Prison Compact, but it was determined by the Legal Division that the Prison groups were not entitled to a Code because they could not comply with Section 7(a) of the National Industrial Recovery Act.

Certain provisions were inserted in the Cotton Garment Industry and the Retail Trade Codes which in effect prohibited members of that industry or trade from dealing in prison made goods unless such goods were manufactured under the terms of a prison compact and these provisions were stayed until such time as a Compact could be formulated by the states engaged in the production and sale of prison made goods on the open market.

The Compact as formulated by prison executives and sponsored by the Association of States Signatory thereto secured the support of the Administrator on December 9, 1933, and was approved by the President on April 19, 1934.

Conferences were held between the Prison Labor Authority and Code Authorities of various industries especially the Cotton Garment and the Twine and Cordage Code Authorities, with respect to agreements as to differentials, mark-ups, charges for labor and overhead, and quantity discounts on products produced within the prisons.

Efforts were made by the Prison Labor Authority to prohibit the expansion of prison industries whose products entered the public markets.

The Prison Labor Authority voted that assessments made by that authority should conform to the assessments made under codes for corresponding industries.

Mr. James V. Bennett, Secretary-Treasurer of the Association of States Signatory to the Compact made formal application for the issuance of an N.R.A. label for use on cotton garments manufactured under the terms of the Compact.

On April 21, 1934, in response to Mr. Bennett's letter of application for the use of labels the Legal Division clarified the question of the Administrator's power to authorize the use of these labels on prison made goods.

On April 27, 1934, the Administrative Officer of N.R.A. issued Policy Decision No. 6, which ruled that products manufactured under the provisions of the Compact may bear the NRA insignia and further specified what the design of the label should be.

Administrative Order V-2 was then issued authorizing and empowering the Prison Labor Authority to issue NRA labels. The Cotton Garment Code Authority entered serious objections to the use of any NRA insignia on Prison made goods and requested that a stay of Administrative Order be issued pending a public hearing on this question. As a result of this application for stay a public hearing was held on Administrative Order V-2 which resulted in the issuance of Administrative Order V-3 June 12, 1934. Administrative Order V-3 modified Administrative Order V-2 and the regulations approved by that order and it also denied the application for a permanent stay of Administrative Order V-2 as applied for by the Cotton Garment Code Authority.

The Compact being recognized as a voluntary agreement, the Assistant to the Administrative Officer, in a letter of April 9, 1935, to the Economic Advisor of the Prison Labor Authority gave his tentative approval of the budget as submitted by that Authority in conformity with the requirements of Executive Order 6859 and in compliance with Administrative Order X-136.

In order that all Code Authorities and other interested in securing compliance with the provisions of the Prison Labor Compact might be instructed as to the procedure to be followed in filing complaints, the NRA sent out forms containing instructions to complainants and Code Authority Field Letter No. 5, of May 26, 1934, for information and guidance.

Complaints concerning alleged violations of the Compact provisions were in most cases settled by the Prison Labor Authority. When the complaints were of such a nature that the Authority could not adjust them satisfactorily to parties involved, they were referred to the Public Agencies Division of the N.R.A., where efforts were made to adjust them in a fair and impartial manner. The case of the application of the Huffine Shirt Company for prison labels, which labels were to be used on

products manufactured by inmates of the Kentucky State Penitentiary was denied after a public hearing held by the Prison Labor Authority on the grounds that the proposed contract which the Huffine Shirt Company was to enter into with the State of Kentucky was illegal because it lacked any specific element of consideration.

On August 21, 1934, by Executive Order 6828, Amendment No. 7 to the Code for the Cotton Garment Industry was approved. This Order imposed a thirty-six hour work week and a proportionate increase in pay of employees, so as to maintain the same weekly wage rate as was provided in the approved Code for this Industry.

The Prison Labor Authority then advised all prisons manufacturing cotton garments that in accordance with Article II of the Compact, they must not operate cotton garment industries in excess of thirty-six hours per week. Apparently this did not satisfy the Cotton Garment Industry as they continued to complain about the burden imposed upon them by prison industries. This resulted in the appointment of the Hotchkiss Committee to make investigations as to whether or not the Cotton Garment Industry could operate under the thirty-six hour work week provision. This Committee recommended that the President appoint another Committee to make a definite study of the competition of products of the Cotton Garment Industry with products of prison labor.

In accordance therewith, the President on October 12, 1934, appointed the Ulman Committee, composed of Judge Joseph N. Ulman, as Chairman, Frank Tannenbaum and W. Jett Lauck. Mr. Lauck was a member of the Hotchkiss Committee. The sum and substance of the recommendations of the Ulman Committee were that fifty million dollars be set aside for the purpose of helping the states to replan and reorganize their prison industries, remove prison made goods from the open market and bring to an end the prison labor controversy which has burdened American industrial and political life for over a century. It was further recommended that the Federal Emergency Relief Administration purchase and use such prison made garments as were then being made in prisons and immediately relieve the open market of this competition. Several conferences were held with the FERA officials and it was tentatively agreed that such a program could be developed as far as that end of the program was concerned.

Nevertheless, the prison group answered the recommendations of the Ulman Committee, urging, first, that adequate state use laws be made compulsory before any relief or aid be granted to the respective States and that a corporation be set up to make an adequate survey of needs of the respective States before any permanent program be undertaken and that in the meantime it be a condition precedent to the granting of Federal aid that limitations be set for the sale of products on the open market by prisons and that a program be worked out through the F.E.R.A., using unemployed labor and preventing idleness in the penitentiaries.

On May 27, 1935, the National Industrial Recovery Board adopted a plan regarding the competition of prison made products with products

of private industry. This plan is set forth in Chapter VI, Section XIII, Pages [illegible] and [illegible].

Executive Order 7194, Appendix "Q", established the Prison Industries Reorganization Administration. The governing body of this Agency consisted of a board of five appointed by the President to hold office at his pleasure. The stablishment of the Prison Industries Reorganization Board terminated official action of the National Recovery Administration with respect to the Prison Labor problem and thereafter the Prison Industries Reorganization Administration was made responsible for carrying forward the constructive attack on the problem originated under the National Recovery Administration.

A minor problem which NRA officials encountered in seeking to obtain compliance with the terms of the Prison Compact was that of arriving at satisfactory voluntary agreements between prison manufacturers and free industry manufacturers with respect to establishing charges for labor and overhead in an effort to arrive at prices for which prison goods could be sold and conform to the provisons of Article V of the Compact. Continual effort was made by NRA officials to arrive at fair decisions with respect to various questions presented.

The Prison Labor Authority was unable to accomplish a great deal with respect to diversification of Prison Industries as provided for under Article VII, Section 2 (f) (1) of the Compact. However, it was able to reduce the production of prison made products in some instances.

During the formulative period of the Compact in the Fall of 1933, those who assisted in drafting the Compact provisions and those who signed it as officials of their respective states did not consider the formal legal aspects of this working agreement. The purely legal phases of the instrument were not given very serious consideration as it was recognized that each institution was regulated by the statutes of its respective state and the Compact was entered into voluntarily with the spirit of cooperation in an endeavor to effectuate the policies of Title I of the National Industrial Recovery Act.

The Compact was implemented by a clause in the Retail Code which prohibited the sale on the open market of prison-made goods not made under its terms. The Compact lacked legal validity as set forth in a memorandum of December 1, 1934, by the Legal Division. The contentions of this memorandum are largely substantiated by Appendix "H" and NRA Legal Research Bulletin No. 864.

On December 28, 1934, an interpretation was rendered to the effect that free labor employed by contractors operating in state prisons were subject to the jurisdiction of the Prison Labor Authority insofar as working conditions were concerned. However, this free labor was to conform to the wages, hours and general labor provisions of the corresponding free industry code. Again on April 11, 1935, another important interpretation was rendered concerning certain prison contractors who were engaged in the manufacturing of cotton garments. The question involved the jurisdiction of the Cotton Garment Code Authority and the Prison Labor Authority.

A decision was rendered that such contractors should be under the jurisdiction of the Prison Labor Authority.

The Prison Compact did curtail to some degree the burdening of the public market with prison goods and the efforts made by the prisons to comply with their Compact diminished the dumping of prison goods on the market at lower than fair current prices.

As a result of conferences and agreements between the Prison Labor Authority and free industry code authorities uniform sales policies with respect to quantity discounts and percentage of markup worked out fairly successfully. It was found that diversification of industry in penal institutions spread work among the inmates and offered training in the performance of varied tasks which were beneficial to them when they again join the ranks of free society.

The writer believes that Federal legislation should be enacted which would encourage the States to enter into a Prison Compact to which the States may subscribe through approval by their respective legislatures. The objectives and purposes of the Compact would be (a) to maintain fair competition between products of private domestic industry and those of prison industry; (b) to assure a diversification of the output of prison industries in fair proportion to the production of affected free industries; (c) to relieve unemployment within the penal institutions of the States by providing work for the inmates of a rehabilitative and character-building nature and lessen the dangers inherent in idleness.

In theory the exclusive State-use system of regulating prison industries sounds simple, but in enforcement and practical application it has many defects. Where the exclusive State-Use System is in effect free industry is deprived of its proportionate share of business from governmental institutions. On the other hand the State-Use System does eliminate prison made goods from the free industry market. Furthermore it may be contended that the State-Use System, especially where tied up with a program of diversification of products, is more readily adaptable by the larger states. If the exclusive State-Use System is ever put into effect on a broad scale, the prisons must be guaranteed the exclusive market by the States and their political subdivisions, for all prison products.

The Prison Industry problem is essentially a state affair. However, the Federal Government can be of assistance through advising and aiding the States in formulating a diversified prison program, but it should not attempt to force any program upon the States which they do not wish to voluntarily accept.

The legal aspects regarding the disposition of prison made goods varies in different States. Many States have enacted regulatory statutes for the purpose of identifying and controlling the shipment of such goods within their borders. Congress likewise has enacted such legislation as the Sumner-Ashurst Bill, the Hawes-Cooper Act, which have important bearing on this question.

CHAPTER I

THE PROBLEM

This report is an effort to review the experiences of industry, prison executives and the National Recovery Administration in developing and administering a workable program for the disposition of the products of penal, reformatory or correctional institutions manufactured, produced or mined in competition with similar products of free industry. For more than a century recognized authorities have been confronted with this problem and many proposals have been made -- some through legislative measures, both national and state, and others through voluntary agreements. None of these appear to have accomplished the desired end -- to the extent that all parties interested are satisfied. However, during the period that most of the free industries of the United States were conducting their affairs under codes of fair competition approved under Section 3 (a) of the National Industrial Recovery Act, it is recognized that the Compact of Fair Competition for the Prison Industries of America offered the most satisfactory means of placing prison-made goods on a fair competitive basis with goods of free industry.

I. FREE INDUSTRY VIEWPOINT.

Under the Compact of Fair Competition for the Prison Industries of the United States of America (hereafter referred to as the Compact), free industry for the first time in the history of this country witnessed the sale of prison-made goods in the open market under an agreement, (voluntarily entered into) by the States, which sought to maintain standards and price policies comparable with those of competing free industries. It was the contention of such industries as the Cotton Garment Manufacturing Industry, the Twine and Cordage Industry, the Furniture Manufacturing Industry and others less affected that they could not operate successfully under the codes of fair competition and meet the prices of prison-made goods in the competitive markets. There are two outstanding arguments against the sale of prison-made products on the open market.

First, the use of inmates in manufacturing, producing or mining products which later go to the public markets deprives free labor of that work. After a careful analysis of this phase of the prison-labor problem there remains little doubt as to the justification of labor's contention. It tends to hold the wage scale to a low figure, and it decreases the employment of free labor. The American Federation of Labor [illegible] has on various occasions stated that it favors the employment of convicts, but it has always fought the sale of prison-made goods in the open market.

Second, the influence of prison-made goods on the price structure for any given competitive commodity sold on the open market should be considered. Because many prisons do not find it necessary to include all overhead on direct labor costs in quoting their prices, industry

has always held that the competition of prisons in the production and sale of commercial products is unfair and that prison products are made and sold at very much lower prices than are comparable products of free industry.

It is further recognized by penological authorities, as well as those of free industry, that the abuses which have developed under prison contract systems has been a decided handicap to free industry both from the standpoint of the products manufactured under these systems selling at ridiculously low prices and the demoralizing effect it has upon free industries' manufacturing standards. Organized industry, as a rule, endorses and approves the employment of prisoners, but they want them employed at occupations which will result in the largest possible spread of employment giving due consideration to disciplinary and humanitarian treatment with a background of protection for the products of free labor for the public market. Generally, industry favors some form of "state use" as a solution to this problem.

II. PRISON EXECUTIVES VIEWPOINT

Practically all prison executives agree that prisoners must work at some useful occupation. The old system of working inmates of an institution at some task which is not their useful or necessary, is rapidly becoming a thing of the past. The morals of prisoners cannot be maintained by merely assigning them to a job which in the end will not benefit either the prisoner or the state. Consequently the prison official of today designs work for his charges which will help them morally and physically and in many instances train them for useful and gainful employment upon their release.

A correct theory for the treatment of prisoners requires that they have a regular amount of work to do each day. It is the product of this work or labor when sold on the market that raises the issue of competition of prison goods versus free industry goods. Prison executives usually operate their institutions under budgets and appropriations approved by elected representatives of the people who, in turn, are compelled to maintain these institutions through taxation. Naturally these executives are continually striving to eliminate any unnecessary expense and to discipline their inmates through productive work which will bring in some financial return.

Due to the ever increasing demand to hold down the public tax burden, both prison officials and legislatures have approved the production and sale of various commodities as a means of providing revenue to partially defray operating expenses. These expenses generally include supplies, overhead and maintenance. Most authorities who have made adequate study of the administration of prisons agree that whenever it is possible to reduce the burden for the taxpayer by employing prisoners at productive labor, providing such employement is on a basis that is equitable to all interests concerned, such reductions are readily recognized as good prison administration.

III. BENEFITS TO PRISONERS.

The nature of the work prisoners should be engaged in varies according to types of crime the inmates are being punished for, conditions under which they must work, to what extent the products of their labor affect outside industry and what reaction the work has upon them mentally and physically. These factors must all be given consideration by the prison executives when planning for the proper administration of a penal institution. In addition, careful consideration should be given to the rehabilitative features of the work. Criminals are sent to prisons for punishment for the crimes they have committed against society. It is society's duty to see that they are provided with curative punishment.

It is also society's responsibility to see that the prisoner is provided with punishment which will mean work. If this work can be so arranged that while the prisoner is being punished, he can be afforded the opportunity to improve his mental, physical and rehabilitative qualities, he will be a much better citizen when released from the institution. It is with these objectives in mind that many prison officials supply work for their inmates so that they will be prepared to meet the normal requirements of good citizenship.

IV. PUBLIC VIEWPOINT

The general public believes that prisoners should be provided work. The Handbook of American Prisons and Reformatories, 1933, prepared by the Osborne Association, Inc., suggests that prison work should meet the following conditions. "(a) Have a definite vocational value to the individual; (b) be productive to the State; (c) compete as little as possible with outside labor and free capital." These conditions seem to stand out clearly as a basis upon which prisoners can work and meet public approval.

Early in 1933 an editorial appeared in the Saturday Evening Post dealing with this problem. It is believed the following quotation from the editorial reflects the viewpoint of a majority of the public with regard to prison labor and the competition of prison-made goods.

> "Most important perhaps of all, the prisoners must not be idle and if there is not enough ingenuity to solve this particular problem, then we might as well give up in despair any attempt to handle the crime situation. Of all crimes against society none quite equals that of keeping prison inmates idle and unoccupied."

At the present time there are many groups, each representing a different viewpoint continually propounding their pet theories upon governors, legislatures and prison executives. But, up to the present time, they have made little headway largely because of the different

reactions on the part of the people from geographical, industrial and agricultural standpoints. This is recognized by the different products manufactured and offered for sale on the public market by various state institutions. For example, Maryland and Tennessee, two industrial states, are engaged in manufacturing cotton garments which later enter the public market. Minnesota and the Dakotas manufacture binder twine and place it on the open market, because they are in the grain producing region of the country where this product is used by farmers of these states in the harvesting of their own crops. This all goes to show that the people of the various states approach the problem from different angles. The following quotation from the bulletin "Prison Industries" commonly referred to as Domestic Commerce Series No. 27. published by the U. S. Department of Commerce indicates that the prison industries problem is largely one for the states to handle:

> "The prison industry problem is essentially a State affair. Since nearly all the prisons are State institutions, supported, where necessary, by appropriations made by their legislatures, and since the punishment of crime is mostly the responsibility of the several States, the methods of care, of discipline, and of rehabilitation of prisoners must necessarily be in each State a State problem, linked closely with its legal code and its organization for the administration of justice. This is particularly true because of the great differences in laws in the several States, differences in the methods of dealing with criminals, in the use of the parole, in the extent of segregation of the various kinds of convicts, and even in the legal and public attitude toward the problems of prison administration."

V. RELATIONSHIP TO N. R. A.

Shortly after the passage of the National Industrial Recovery Act the N.R.A. began to receive preliminary drafts of proposed codes of fair competition as drawn up and sponsored by industrial trade associations and groups of respective industry members. It then developed that an attempt was being made by the Cotton Garment Manufacturing Industry, the Retail Trade Group, the Twine and Cordage Manufacturing Industry, the Farm Equipment Manufacturing Industry and the Furniture Manufacturing Industry to do indirectly that which might not be accomplished directly through the insertion of restrictive clauses in their codes. Their objective was to prohibit members of these industries from handling or selling prison-made goods. For illustration, the preliminary draft of the Cotton Garment Code as proposed by that industry, contained the following clause known as Article VIII:

"No person engaged in the Cotton Garment Industry shall, after November 1, 1933, manufacture or cause to be manufactured, or acquire, sell, or distribute in any manner whatsoever, any garment or part thereof produced in whole or in part in any publicly maintained penal or reformatory institution, and no person engaged in the Cotton Garment Industry shall, after December 1, 1933, purchase from any such institution any textiles or materials or other supplies. The Cotton Garment Code Authority shall from time to time make such recommendations with respect to convict-made goods or prison competition as may be deemed necessary or helpful in aiding the effectuation of the policy of the title of the National Industrial Recovery Act and the provisions of this Code."

Prison executives of the United States were familiar with the attempts being made by these industries to place such restrictive clauses in their codes, and therefore held a meeting in New York City on July 13, 1933 and adopted the following resolutions:

"WHEREAS, the employment of prisoners is absolutely essential to the development of a sane prison program for the protection of society and the rehabilitation of the prisoners, and

"WHEREAS, the burden of taxes now resting on the people will be considerably relieved by the proper employment of prisoners, and

"WHEREAS, in the formulation of the industrial codes proper provision for the employment of prisoners should be adequately considered,

"BE IT THEREFORE RESOLVED, that the National Recovery Administration be furnished with a copy of the following principles, and be urged to have the same incorporated in the various industrial codes.

"1. Each industry within the prison shall have the same hours of labor and working conditions made applicable to that industry by its particular code.

"2. All goods, wares and merchandise manufactured, produced or mined by prisoners shall have charged into the cost of production the same labor burden as applies to the same industry in the section in which the institution is located.

"3. Each organized industry operating under a code shall make adequate provision for supplying employment opportunities to the men and women in prison in fair proportion to the number of workers employed in that industry.

"4. Goods, wares and merchandise manufactured, mined or produced by prisoners in compliance with the code of its particular industry shall have the same access to market as similar goods, wares, or merchandise manufactured, mined or produced by free labor."

As a result of this meeting, Dr. Louis N. Robinson, one of the nation's outstanding penologists and professor at Swarthmore College, Swarthmore, Pennsylvania, was recommended as an adviser to represent the prisons in Washington on all matters relating to the problems of prison labor which were being considered in the formulation of codes.(*)

These recommendations resulted in the selection of Dr. Robinson to represent the prisons in this capacity.

The President received a vigorous protest from the Governor of Alabama, which, in turn, was referred to Mr. Sanford Bates, Director of the Bureau of Federal Prisons, who presented the matter to General Johnson at the President's request in an effort to work out some compromise of this difficult problem. (**)

According to a memorandum of August 8, 1933 from Mr. John M. Keating, Legal Advisor, to Blackwell Smith, Assistant General Counsel, the Governor's letter to the President on July 6, 1933, stated quite unequivocably that he contemplated court action if any attempt was made to absolutely outlaw prison labor and thereby take this property right from Alabama. With this threat before the Administration, it can readily be seen how the problem of prison-made goods in competition with free industry goods became an appropriate question for N.R.A. to solve. Especially was this true when those industries most greatly affected by the competition of prison-made goods were striving to eliminate so far as possible the sale of prison-made goods on the public market. On the other hand, prisons within the states maintained and operated under statutes and regulations prescribed by their respective legislatures were looked upon as being in an entirely different category from private Industrial establishments. In a memorandum of August 8, 1933, from Mr. John M. Keating to Mr. Blackwell Smith, the following was stated:

"It is quite apparent from cursory perusal of the file and of N.I.R.A. that the states which use prison labor to manufacture competitive merchandise cannot comply with the N.I.R.A. The particular reason for this is Section 7(a) of N.I.R.A. which requires the right of employees to organize and bargain collectively and requires minimum pay and maximum hours of labor. Further, than this the definition of the word 'person' in Section 7(d) probably does not include a sovereign state."

(*) Letter of E. R. Cass, General Secretary, American Prison Assn., and Osborne Assn., to Franklin D. Roosevelt, July 14, 1933. NRA Legal Division Files.

(**) Page 75 - Transcript of Hearing of Ulman Committee, Nov. 16, 1934.

It was then left for the states to voluntarily agree upon some form of a Compact which would encourage them to operate their institutions and sell their products in a manner comparable to those products sold by free codified industries on a basis of fair competition. Thus a background was established for the handling of the prison labor problem in the N.R.A.

CHAPTER II
THE COMPACT

I. ORIGIN

The Compact originated in a decidedly different manner than did the codes of fair competition.

The officials in charge of prison affairs in the various states entered into the Compact as a result of vigorous effort on the part of certain industrial and labor groups to eliminate the sale of prison-made goods in the open market.-- The principal opponents being manufacturers of cotton garments, twine and cordage, furniture, farm machinery and the representatives of various labor interests. Although the first meeting of the prison executives, of which the N.R.A. has record, was held on July 13, 1933, in response to a call by the Board of Directors of the American Prison Association and the Osborne Association in New York City, (*) there was a previous meeting in May 1933, of a few of the prison executives of States engaged in industrial production and representatives of the Bureau of Federal Prisons.

At this meeting initial steps were taken by those present to arouse interest in all of the States whose prisons manufactured goods for the open market and to inform them that the Cotton Garment Industry, in anticipation of the passage of the N.I.R.A., was planning to prohibit the placing of prison made products on the open market through the use of code provisions. It was due to the intense interest developed at this May meeting in New York City that a second meeting was called on July 13, 1933, inviting prison representatives of all the states to attend.

On August 2nd and 3rd, 1933, the Public Hearing on the Cotton Garment Code was held in Washington and at that time the draft of the code contained a clause (Article VIII) (**) which prohibited the use of prison labor or the sale of products made in whole or in part in a prison in the Cotton Garment Industry. The code for the Retail Trade which was also being considered at this time, likewise contained a prohibition of the sale of prison-made products by retail stores. Therefore, it became necessary for the prison officials to prepare and submit some form of an agreement which would assure that prison-made products would be sold upon the open market in fair competition with the products of free industry.

(*) Page 8, ante.
See also Statement of Howard B. Gill, Economic Adviser of the Prison Labor Authority.

(**) Page 8, ante.

On September 8th and 9th, 1933, there was held in Washington another meeting of a group of prison executives which represented 32 states and the Bureau of Federal Prisons. At this meeting, it was decided to make application to the President of the United States for a code of fair competition for the Prison Industries under Section 3 (a) of the National Industrial Recovery Act. As a result thereof the first draft of the proposed code was submitted to the N.R.A. (*) After this proposed Prison Industries Code had been submitted to the N.R.A. it was referred to Mr. John Keating who indicated that it was an impossibility to consider a code of fair competition for the Prison Industries under the N.I.R.A. because all codes had to include Section 7 (a) of the Act and compliance with such a provision on the part of the states would be out of the question. This opinion is likewise supported by a letter from Mr. Sanford Bates, Director of the Bureau of Federal Prisons to General Johnson on September 20th which, in part states as follows:

> "I am inclined to agree that strictly speaking the statement of principles cannot be considered a statutory code. The important thing, of course, is to bring about uniform and fair treatment in the prison labor situation the country over and it seems to me this cannot be done unless the question of prison labor is entirely kept out of the various codes. Reference could then be made in each code to the agreement among prison people which could be given your sanction and so far as circumstances will permit be made binding upon the members of each industry and the states themselves."

However, Mr. Bates did indicate that it would be possible to work out an agreement among the prison officials and executives of the States, which could be given N.R.A. sanction and made binding upon the respective States which voluntarily signed the agreement.

On September 28th, Mr. Keating submitted a letter to Mr.Bates(**) setting forth the legal objections to the proposed code for the prison industries. This letter further indicates that possibly a voluntary agreement between the states under Section 4 (a) could be worked out. The following quotation from this letter sets forth

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(*) Application for a Prison Industries Code found in N.R.A. Prison Labor Files (former Public Agencies Division files.)

(**) Letter found in N.R.A. Legal Division Files.

Mr. Keating's views:

> "It would appear to the writer that the code in its present form cannot be considered a code under Section 3, Title I of the National Industrial Recovery Act, as apparently attempted, for the reasons that Section 7 (a) and 10 (b) of N.I.R.A. are not included. As you will note by reading Title I of N.I.R.A. it is mandatory that every code approved by the President under Title I incorporate these provisions of N.I.R.A.
>
> "It would appear to the writer that it is impractical to consider a code which would incorporate these sections, particularly Section 7 (a) which deals with collective bargaining. It is probably impractical to consider collective bargaining with prisoners. It is further probably impractical to ask the governors of sovereign states to subscribe to a code which the President has the right to modify under Section 10 (b).
>
> "The writer considered taking action under Section 4 (a) of the Act covering voluntary agreements, but it will be noted that this section provides as follows:
> 'The President is authorized to enter into agreements with, and to approve voluntary agreements between and among persons engaged in a trade or industry, labor organization, and trade or industrial organizations, associations or groups relating to any trade or industry.'
>
> "The term person is defined in Section 7 (b) of the Act as 'any individual, partner, association, trust or corporation.' It would appear doubtful whether the President is authorized by this section to enter into an agreement between states.
>
> "However, it would appear to the writer that the action contemplated under this agreement could be accomplished by a Compact between states as it is contemplated in Section 10 of Article I of the Constitution."

On September 30th, Mr. Bates advised Mr. Keating that for the present he recommended that any clauses regulating prison labor be omitted from codes on condition and with the understanding that a Compact agreement be worked out between the various states which would effectively solve the question. He further advised that if this was not deemed feasible, Mr. Keating could have the N.R.A. postpone for six months the date when the clauses affecting prison labor became effective pending the drafting and submission of a Compact agreeable to the President

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(*) Letter found in N.R.A. Legal Division Files.

and in the event no satisfactory agreement was reached that the clauses would then be reinstated. (*)

Between October 1st and October 17th, when the prison-made goods provisions were inserted into the then pending Retail Code considerable informal discussion took place between the prison officials represented by Mr. Bates and his assistant, Mr. J. V. Bennett, together with Mr. Keating of the N.R.A. and Mr. Raymond Walsh, counsel for the Cotton Garment Manufacturers and the Twine and Cordage Institute. The result was the insertion in the Retail Code of the Prison-labor provision which was proposed by General Johnson, and later this provision was included in the Cotton Garment Manufacturing Code.

The National Recovery Administration, in a memorandum of October 25, 1933, issued the following statement of policy:

> "Prison-Made Goods. A code may include a provision forbidding transaction in Prison-made goods at prices lower than the lowest reasonable cost or price in private commerce." (**)

As a result of this statement of policy , Mr. Keating, informed Mr. Blackwell Smith, of the following:

> "Mr. Richberg has given assurance to Sanford Bates who in turn has given assurance to the governors of the 48 states that the provision regarding prison labor in all codes would be based on the fundamental principle of the Prison Labor Provision in the Retail Code." (***)

Thus, it became necessary for the prison executives of the various states to develop a voluntary Compact with the definite objective of materially assisting in effectuating the policies outlined in Title I of the National Industrial Recovery Act.

(*) N.R.A. Legal Division Files, "Prison Labor General 1933"

(**) Confidential Policy Memorandum of N.R.A. dated October 25, 1933.

(***) Memorandum from Mr. Keating to Blackwell Smith of October 30, 1933- Prison Labor General Files.

II. OBJECTIVES

In most respects the principles laid down by the prison executives in the resolution passed at the meeting in New York City on July 13, 1933, (*) covered the objectives they had in mind when they later agreed to bind themselves together under the Compact. However, when the Compact reached its final stages of development, General Johnson submitted a letter of transmittal to the President under date of April 18, 1934, which, in part, sets forth the following concise and detailed objectives of the Compact:

"This has been the result of a long and continuous effort by this Administration to establish and maintain fair competition between products of private domestic industry and those of prison industry.

"The Compact,(*) covers products mined, manufactured, produced or distributed by prison labor in the states signatory to the Compact. It limits the hours of labor in prison industries to not more than those prescribed in the applicable code, adopted under the laws of the United States governing each particular industry, and provides further that in no case shall any inmate be required or permitted to work more than forty hours in any one week. The hours of operation of productive machinery are limited to not more than is prescribed in the Code of the competing private domestic industry. It prohibits the employment of persons under sixteen years of age in any prison industry and of persons under eighteen years of age at operations or occupations which are hazardous in nature or dangerous to health.

"The Compact further provides that prison products when sold by the prison or through a contractor, shall be sold at prices not lower than the fair current prices prevailing in the market in which the product is customarily sold. It provides that where contracts for the labor of prisoners are made they must insure a return from the contractor of an amount equal in value to the cost per unit of product for labor and overhead necessarily paid in competing domestic industry on the comparable product.

"A Prison Compact Authority is established in the Compact, consisting of nine individuals, six of whom shall be elected annually by representatives of the states signatory to the Compact, and three to be appointed by you to represent labor, industry and consumers, respectively.

"This Authority will administer the Compact, make rules and regulations, establish a uniform cost finding system and determine the prices below which prison products shall not be contracted for. The Authority may require reports and statistics necessary

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(*) Pages 9 and 10 ante.
(**) The Compact, See Vol. 9 Page 731 Printed Code.

to effectuate the policies of the Compact from the states signatory to the Compact. To do away with one of the serious abuses resulting from prison labor, the Authority is vested with power to require diversification of the output of prison industries in fair proportion to the industries affected and is given definite power to prohibit the expansion of any existing prison industry which bears a disproportionate share of competition. The Authority is authorized to hear and adjust complaints arising under the Compact.

"The decisions of the Prison Compact Authority are subject to appeal from the Authority to you or to the person to whom you delegate your functions vested under the Compact."

In addition to the above, it was the intention of the sponsors to have as many states as possible, along with the Federal Department of Justice and the District of Columbia, approve the Compact regardless of whether or not such states' prison industries operated on a state-use system. It is to be remembered that the Compact does not apply to state-use products and public works. This exemption is set forth in Article VI of the Compact and reads as follows:

"The restrictions in this compact shall not apply to goods, wares, or merchandise manufactured, produced or mined by any penal or correctional institution which are solely for the use of tax-supported institutions, agencies, departments, or activities of any state or its political subdivision, nor shall they apply to the construction of public works or ways financed wholly from funds of the state or its political subdivision."

In addition to Article IX, Section 3 of the Retail Code as approved October 21, 1933, setting forth certain provisions relative to the sale of prison-made goods, the Cotton Garment Code as approved November 17, 1933, carried under Article VIII a similar provision relative to the handling of prison-made goods by members of that industry. Both of these provisions were stayed for a reasonable length of time pending the formulation of a Compact between the states engaged in the production and sale of prison-made goods in the open market. The Executive Order approving the Cotton Garment Code likewise prohibits the members of that industry from enforcing certain prohibitive clauses against prison-made products pending the approval of the Compact. With these provisions in the Retail Trade and Cotton Garment Manufacturing Codes, it is apparent that the objectives sought through the adoption of the Compact were not sponsored entirely by the prison groups. Here it is readily understandable that free competing industries, through their codes, were able to force the greater portion of the prison industries under some form of a Compact which would have to meet the approval of both prison executives and free industry. Thus, the N.R.A. was the agency through which both groups worked to place their objectives regarding prison industries into a workable agreement.

III. FORMULATION.

After the opinion by the Legal Division (*) that a Code of Fair Competition for the Prison Industries of America could not be approved under the National Industrial Recovery Act, it then became the [illegible] responsibility of the prison officials and the N.R.A. to formulate a plan which the states could agree to, whereby they could dispose of their prison products on a basis comparable to those of free industry, assuring free industry that it could as far as possible place its goods on the open market in a fair competitive manner. Inasmuch as Mr. Keating's opinion sets forth the fact that under Section 4 (a) of the Act the states could enter into a voluntary agreement, subscribing to the objectives referred to above, the prison executives appointed a Committee consisting of Mr. John J. Hannan of Wisconsin, Chairman, Mr. Harold E. Donnell of Maryland, Mr. C. L. Stebbins of Michigan and Mr. James V. Bennett of the U. S. Department of Justice to formulate a Compact. The Committee, after conferences with the representatives of the affected free industries and the legal Division, the Industrial, Labor and Consumers Advisory Boards of the N.R.A., submitted a draft of the Compact to General Johnson, on December 8, 1933. Accompanying this draft of the Compact, was a letter indicating that this proposal had been submitted to representatives of the American Federation of Labor and to the Secretary of Labor, and it was the understanding of the sponsoring Committee that the draft as submitted was acceptable to them as well as to the Advisory Boards. This letter further requested that if the proposed Compact was satisfactory to General Johnson the committee desired to obtain the approval of a substantial majority of the states prior to January 1, 1934. (**)

On December 9, 1933, General Johnson wrote a letter to the Prison Industries Code Committee c/o John J. Hannan, Chairman, as follows:(***)

> "I have the Compact of Fair Competition for the prison Industries submitted with your letter of December 8.
>
> "I have carefully examined it and I have submitted it to the Labor Advisory, Industrial Advisory and Consumers Advisory Boards of this Administration.
>
> "The Compact as drafted is hereby approved by me and you are advised that the Compact satisfies me under the terms of the Prison Labor Provisions in the Retail Code and the Cotton Garment codes. When and so long as any penal institution subscribed to, complies with and makes effective this compact, the restrictive provisions of the Retail Code and the Cotton Garment Code shall not apply to products of said institutions.

(*) Pages 14, 15 and 16 ante.

(**) Refer to N. R. A. Legal Division files and Prison Labor General files.

(***) N. R. A. Release No. 2217

"You may be further asured that Prison Labor Provisions hereafter approved in codes of fair competition under the National Recovery Administration, shall be consistent with the provisions of the Retail Code and the Cotton Garment Code and this Compact."

Another letter under date of December 9, 1933, submitted by Raymond A. Walsh to Mr. John Keating of the Legal Division, includes a statement to the effect that generally speaking the Compact was satisfactory and that he had no fundamental objections to it. (*)

Copies of the revised Compact were then submitted to the various prison executives of the states for their approval accompanied by an explanatory statement signed by the Prison Labor Committee. (**) The explanatory statement called attention to the changes that had been made in the revised Compact as compared with those originally submitted in the Prison Industries Code.

Following General Johnson's letter to Col. John J. Hannan, Chairman, of the Compact Committee, explained that the Compact as drafted met his approval, the Code Committee issued a call to the various state prison executives requesting that they meet on January 18, 1934, for the purpose of organizing the Association of States Signatory to the Compact of Fair Competition for Prison Industries of the United States of America. On January 18, 1934, there were assembled in Washington, thirty-one prison officials representing 23 states and the Department of Justice in a meeting which resulted in the organization of States Signatory to the Prison Labor Compact.(***) After the Association was duly organized a suitable constitution and set of by-laws was adopted for the purpose of conducting the affairs of the signers of Compact of Fair Competition. (****) The Associations of states Signatory to the prison Labor Compact from then on acted in a similar capacity in respect to prison industries as trade associations did with respect to free industry.

After the Association was duly organized and its constitution and by-laws adopted, six members of the Prison Labor Authority, were elected, representing states signatory. The members elected were as follows: Colonel John J. Hannan of Wisconsin, H. E. Donnell of Maryland, Dr. Walter N. Thayner of New York, William F. Feagin of Alabama, S. B. Hunter of Missouri, C. L. Stebbins of Michigan. It is to be remembered that these men were elected as a more or less temporary Prison Labor Authority pending the final and formal approval of the Prison Labor Compact by the President.

(*) N. R. A. Legal Division Files, Prison Labor General.

(**) Prison Labor Minute Files, 1934.

(***) Prison Labor Meeting Files, Deputy's Files, 1934.

(****) Prison Labor By-Laws Files, Public Agencies Division, Prison Labor Files.

On January 19, 1934, in Washington, D. C., the elected members of the Prison Labor Authority assembeled and selected the Following as their officers: Col. John J. Hannan, Chairman of the State Board of Control of Wisconsin, Chairman; H. E. Donnell, Superintendent of Prisons for the State of Maryland, Vice-Chairman; James V. Bennett, Secretary-Treasurer, Mr. Bennett, of the Department of Justice was Assistant to Mr. Sanford Bates, Superintendent of the Federal Bureau of Prisons.

During the interim from December 9, 1933, to April 18, 1934, the Prison groups through their temporarily elected Compact Authority were able to secure the signatures of the governors or prison executivees of 28 states to this Compact and on April 18, 1934, General Johnson the Administrator, forwarded the Compact, accompanied by a letter of transmittal, to the President.

IV PRESIDENTIAL APPROVAL.

The President, by Executive Order, gave his approval to the Compact on April 19, 1934. This Executive Order also appointed the following men: Thomas A. Rickert, Samuel A. Lewison and Thorsten Sellin, as members of the Prison Labor Authority to represent labor, industry and consumers, respectively. The Executive Order is attached to the Compact.(*)

Thus, this Compact, signed by the various states as a voluntary agreement, became effective upon approval by the President.

(*) The Compact, See Vol IX, Page 731, Printed Code.

CHAPTER III

THE PRISON LABOR AUTHORITY

I. CONFERENCES WITH COTTON GARMENT CODE AUTHORITY.

On January 19, 1934, in Washington, D. C., a joint conference was held by the Prison Labor Authority with representatives of the Cotton Garment Code Authority. The purpose of this conference was to determine insofar as possible, the manufacturing costs of workshirts and workpants in the free industry plants operating under the provisions of the Cotton Garment Code so that the prisons might be able to put into effect similar charges for the manufacture of like products. (*)

The information submitted by the representatives of the Cotton Garment Code Authority indicated that the cost per dozen for No. 2 chambray workshirts in a factory manufacturing four hundred thousand dozen or more per year, all employees working on a 40 hour week basis at a minimum salary of $13.00 a week, varied from $1.64 to $1.82 per dozen, and that costs for manufacturing in the South where the southern differential in wage scales applied, would be approximately eight cents per dozen less. On No. 4 union special workpants, the Cotton Garment representatives contended that the manufacturing costs varied from $1.63 to $2.95½ per dozen. The lower figure was submitted by a prison contractor operating in the Maryland State Penitentiary.

The conference then adjourned until January 20, 1934, when an extended discussion took place as to whether the prisons should be allowed a differential because of the sales resistance to prison made goods. There was also considerable discussion as to the factors which should be considered in setting sales prices of prison made goods. It finally seemed to be the concensus of opinion that the Prison Labor Authority would have to determine first, the following questions: the labor cost per unit which each state should collect; second, where the state was in the State-Account-System what price the state should charge to the jobber, distributor or retailer. During the course of the discussion Mr. Hunter of the Cotton Garment Code Authority made the statement that - "One of the shirt companies was currently manufacturing shirts in the Alabama Prison for which they were paying only seventy cents per dozen. Obviously this was too low a price and that both parties to this contract should be requested immediately to make some revision."

As a result of this condition the Chairman of the Prison Labor Authority appointed Messrs. Donnell, of Maryland; Feagin, of Alabama, Hunter of Missouri; and Stebbins of Michigan, to discuss and work out the problems which then existed.

The Prison Labor Authority and the Cotton Garment Code Authority met again in Washington, D. C. on February 20, 1934, for the purpose

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(*) Minutes of Prison Labor Authority Meeting, January 19, 1934.

of determining, as set forth in Subsection (d) of Article VIII of the Compact, the prices, charges and amounts to be established for workshirts, workpants and dress shirts. At this meeting Mr. Arthur Schwab, who had previously been engaged to make an investigation of the cost of producing the above-mentioned articles, submitted figures from a number of manufacturers on standard grades of workshirts. This resulted in an agreement wherein the Cotton Garment Code Authority acquiesced in a differential for prison made shirts in favor of prisons to the extent of 10% or approximately 99.12½ cents per dozen.(*) Likewise agreements were reached between the Prison Labor Authority and representatives of the Cotton Garment Code Authority on mark-ups as follows: 5% to manufacturers, 10% to jobbers and 20% to retailers. On workpants it was agreed to give a differential of 10 cents per dozen. The following schedule was tentatively approved as the amounts to be charged by both prisons and the free industry manufacturers for labor and overhead on workshirts and dress shirts and workpants.(**)

	Work Shirts	Dress Shirts	Work Pants
Direct labor charge	$1.10	$1.75	$1.87
Total Overhead charge	$ .40	$1.00	$ .73

This agreement in a general way appeared to meet the approval of both the Prison Labor Authority and the cotton garment manufacturer. However, it will be observed later in this report that the Cotton Garment Code Authority could not control the prices that the various members of that industry charged, due largely to the fluctuation in the price of raw materials. The prisons then resorted to the method of using the lowest prices quoted in the market by free industry manufacturers as the basis for their sales. This action was taken by the Prison Labor Authority from time to time as information was received by them that free industry prices had been lowered.

On February 23, 1934, Mr. Howard E. Wahrenbrock, Assistant Counsel, Legal Division, N.R.A., submitted a memorandum for the Legal Division Prison Labor General File verifying a telephone conversation which he had with Mr. Bennett of the Prison Labor Authority wherein it is stated that he, Mr. Wahrenbrock, "suggested the dubious legality of some of the things that may have been done by representatives of industry relative to prices in recent meetings of the Prison Labor Compact Authority with representatives of Industry and requested Mr. Bennett to withhold general dissemination of instructions relative to prices for the present." This memorandum clearly sets forth the doubts of the Legal Adviser as to the legality of any agreements relative to overhead, labor costs, discounts and differentials which might have been entered into at joint meetings of industry representatives with the Prison Labor Compact Authority.

(*) See Minutes of Meeting of Prison Labor Authority, January 20, 1934.

(**) See Minutes of Meeting of Prison Labor Authority, January 20, 1934.

On April 13, 1934, another joint meeting of the Prison Labor Authority and representatives of the Cotton Garment Code Authority was held in Washington. The principal matters discussed at this meeting involved the question of the fair charge for contract prison labor and was held to be "equal in value to the cost per unit of production for labor and overhead necessarily paid in competing domestic private industry on comparable production." This charge was to be determined with respect to work shirts and dress shirts.

Due to a tentative agreement entered into at a meeting on February 20, 1934, wherein the charge for labor and overhead in the manufacturing of dress shirts was decided to be $2.75 per dozen, it was contended by Mr. Feagin and Mr. Stewart of Alabama that the Alabama Prison shirt factory had been forced to close down. This matter was brought to the attention of the Prison Labor Authority at the April 13, 1934, meeting at which was discussed at some length conflicting figures as to labor costs and overhead submitted by two industrial engineers, one representing the Cotton Garment Code Authority and one introduced by a prison manufacturer. The result was an agreement that the charge for direct labor in the manufacturing of dress shirts should be $1.50 per dozen and the overhead charge be $0.94 per dozen making a total of $2.44 per dozen.

It was at this meeting that the Cotton Garment Code Authority entered a complaint against the State of Tennessee for contracting and manufacturing for their account an order consisting of many thousand dozens of workshirts at a direct labor charge of $0.71 per dozen.

In a memorandum from Mr. Sidney Prince, Jr., Legal Adviser, N.R.A., to Mr. Linton M. Collins, Deputy Administrator and Acting Division Administrator of Division 8, on April 16, 1934, it was stated that:

> "Mr. Ralph Hunter and Mr. Walsh, Counsel for the Cotton Garment Code Authority at this point expressed great skepticism concerning the effectiveness of the Compact. They called it a scrap of paper and stated that they thought that the conference should adjourn and that they should seek the immediate restoration of the inhibitive clauses of the Retail Code which would prevent the sale of any prison made goods by any retailer." (*)

Upon the advice of Mr. Prince, the Cotton Garment Code Authority was requested to enter a complaint against the State of Tennessee to be lodged with the Prison Labor Authority pursuant to Article VII, Section 2, subsection (g) of the Compact. After the Prison Labor Authority had taken action upon this matter so that it could be reviewed by the delegate of the President, acting under the authority of Article VII, Section 2 of the Compact, both groups appeared satisfied and a break was averted. (**)

(*) Memorandum of April 16, 1934, from Sidney Prince, Jr., to Linton M. Collins, Acting Division Administrator, Prison Labor Minutes File.

(**) Memorandum of April 16, 1934, from Sidney Prince, Jr., to Linton M. Collins, Acting Division Administrator, Prison Labor Minutes File.

At a meeting of the Prison Labor Authority on April 14, 1934, it was decided to send Mr. Chapman of Missouri to the State of Tennessee to discuss the matter with the authorities there and attempt to have them conform to the labor and overhead charges as agreed upon in the meeting of February 20, 1934.

Another joint conference of the Prison Labor Authority and the Cotton Garment Code Authority was held on August 30, 1934, in Washington, D. C., at which time a Committee of four was appointed (two representatives of the Prison Labor Authority and two of the Cotton Garment Code Authority) to work out further differences between the two authorities regarding the sale of cotton garments. At this conference the Cotton Garment Code Authority entered protest against the State of Delaware, Florida, Indiana and West Virginia, relative to their activities in disposing of prison made goods without the use of the Prison Compact label. The records of the Prison Labor Authority show that the authority had taken action prior to this conference and that orders for labels had been received from the States of Delaware, Florida and Indiana to be used in accordance with the rules and regulations as laid down by the N.R.A. and the Prison Labor Authority. However, it is to be noted that Florida did not become signatory to the Compact until July 25, 1934.

Adjustment of the complaint against the State of West Virginia was made by the Prison Labor Authority and the prison officials of that state as a result of this protest.

It was at this conference that the Prison Labor Authority notified the Cotton Garment Code Authority that it had temporarily abandoned the provisions for overhead which that Authority had agreed to earlier in the year as a basis for determining the cost per unit of production. This action was taken because of the prevailing prices on comparable garments offered in competing areas by private manufacturers operating under the Cotton Garment Code, which varied to such an extent that no uniform basing price could be adhered to. The Cotton Garment Code did not contain provisions fixing the prices of its products when sold in the market. However, the Prison Labor Authority agreed to consider a sliding scale of overhead and labor charges to be used in contract prisons, based upon the agreements entered into with the Cotton Garment Code Authority in February, 1934. (*)

It was at this conference that the Prison Labor Authority urged the Cotton Garment Code Authority to use its good offices in an effort to eliminate advertisements against prison made goods manufactured under the terms of the Compact.

II. CONFERENCES WITH TWINE AND CORDAGE CODE AUTHORITY

On January 30, 1934, the Prison Labor Authority met with representatives of the Cordage and Twine Industry in an effort to agree upon

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(*) Minutes of Prison Labor Authority, August 31, 1934. Prison Labor Minutes File.

the fair market price for binder twine, but inasmuch as the International Harvester Company was not represented at this meeting and as it was one of the major private industries manufacturing and marketing twine in competition with prison twine, it was deemed advisable that the two groups meet in Chicago on February 6, 1934, at the Hotel Stevens where all interested parties could be heard and obtain more complete data with respect to the manufacture and sale of binder twine. This proposal was agreed to by both factions and a sub-committee of the Prison Labor Authority known as the Binder Twine Committee was appointed to represent the Prison Labor Authority at this meeting. The principal thing accomplished at the meeting of February 6, 1934, was that the prisons tentatively agreed to reduce their production of binder twine in 1934 to approximately 39,000,000 pounds as compared to 59,000,000 pounds produced in 1933. An effort was made to get together on price differentials and quantity discounts based upon current prices; however, inasmuch as in the State of Minnesota the price of binder twine sold by the state penitentiary is determined by a State Statute passed by the legislature, it was impossible to enter into any permanent agreement with respect to discounts and differentials. The following is the suggestion which was offered at the close of the meeting and was to be considered as a basis for the year 1934:

"1/8¢ for 10,000 pounds and less than a carload

1/4¢ for carload lot

3/4¢ any amount to jobbers who purchased from 200,000 - 250,000 pounds annually

1¢ for 300,000 pounds to above

1-1/4¢ for 1,000,000 pounds and over

The differentials which it was felt that could be allowed to the prisons were as follows:

Missouri, Michigan, and Oklahoma; 1/2¢ a pound, and the same discounts as the International.

Minnesota: A differential of 1/4¢ a pound, with a discount of:

1/8¢ on 3,000 pounds
1/4¢ on 10,000 pounds
1/2¢ on 20,000 pounds and over.

Wisconsin: 1/2¢ a pound differential, with the same discounts as Minnesota; other than that Wisconsin should have the right to give for the amounts in excess of 20,000 pounds, the same discounts as are provided in the International schedule of discounts." (*)

(*) Minutes of Binder Twine Meeting of February 6, 1935, Prison Labor Minutes, Deputy's files.

The Binder Twine Committee of the Prison Labor Authority met again on March 22, 1935, at Chicago, with representatives of six major Binder Twine free industry manufacturers and officials of the states which manufacture binder twine in their prisons, in an effort to agree upon prices and discounts for which this product should be sold during the year 1935. At this meeting the prison officials insisted that they be allowed to sell prison made twine at a differential of 1/2 cent per pound less than free industry, regardless of the sale price. However, they did agree to follow the same basis of quantity discounts using the retail price of 7½ cents per pound based upon manufacturing costs. Free industry twine manufacturers would not agree to such a large differential. They indirectly agreed to grant the prisons 1/4 of a cent per pound differential which the prisons were reluctant to accept. The reasons given by the prisons for not accepting this small differential was the unfavorable advertising which some of the free industry people were carrying on in an attempt to discourage the sale of prison made binder twine.

On April 30, 1935, at Madison, Wisconsin, the Prison Binder Twine Group met again and determined the differential for prison made twine to be 1/2 cents per pound. The result was that free industry could do nothing about it as each twine producing state could fall back on their sovereign rights and sell their products at prices comparable to those of free industry. This was verified by the adoption of a price policy by the Prison Labor Authority at their meeting of May 10, 1935, in Washington. This policy was as follows:

> "That the base price which shall be used by the Prison Labor Authority as the prevailing low price for binder twine for 1935, shall be the lowest net price offered by representative private firms after deducting all discounts. That the 1935 differential on binder twine for prisons shall not exceed 1/2 cent per pound."

At a joint meeting between the Binder Twine Committee of the Prison Labor Authority and the Binder Twine Committee of the Twine and Cordage Code Authority in Chicago on March 22, 1935, considerable discussion was held on the subject of the proposed legislation than before the Minnesota State Legislature with respect to the sale of binder twine manufactured in that state. This legislation proposed to set a price on binder twine to be sold by the Minnesota State Prison to the retailer and farmers of that state. Although those present at the conference realized that it was impossible for the N.R.A. to stop this legislation, the concensus of opinion was that all sales of binder twine manufactured in the Minnesota prison and sold outside the state by the State Prison should be sold in accordance with the prices filed by the affected Code Authority and the Prison Labor Authority. Mr. McMullen, Superintendent of Prison Industry of Minnesota, although not in a position to speak officially, indicated that the Prison Board would be willing to conform to such an agreement.

At this same Conference it was agreed that the Binder Twine Committee of the Prison Labor Authority would recommend the establishment of an open price filing system with the Prison Labor Authority for all

states engaged in the manufacturing of binder twine and the placing of the same on the open market. These filed prices were to be open to examination by members of the Twine and Cordage Manufacturing Industry, providing they likewise left their records of the prices filed by them with the Twine and Cordage Code Authority open to examination by the various members of prison industries. This resulted in each affected Authority being able to obtain the most recent information regarding prices and in turn resulted in a better understanding regarding market conditions affecting the sale of binder twine.

The remaining important matters discussed at this meeting on March 22, 1935, was that of soliciting cooperation between the Binder Twine Committee of the Twine and Cordage Code Authority and the Binder Twine Committee of the Prison Labor Authority in carrying out a program of requesting an embargo for at least a one year period on the importation of foreign twine or foreign materials used in the manufacture of binder twine. Those present agreed to give their support and endorsement to a petition which had previously been filed by free industry Binder Twine manufacturers with N.R.A. requesting that this embargo be granted under Section 3 (e) of the National Industrial Recovery Act. (*)

III. ELECTION OF FORMAL PRISON LABOR AUTHORITY

At a meeting of Prison Labor Authority on May 1, 1934, in Washington, D. C. the following were formally elected officers of the Authority:

Sam Lewisohn, New York, Presidential Appointee, Chairman

Col. J. J. Hannon, Wisconsin, Representative of Binder Twine States, First Vice Chairman.

H. E. Donnell, Maryland, Representing the Cotton Garment Manufacturing States, Second Vice Chairman.

James V. Bennett, Federal Bureau of Prisons, Secretary-Treasurer. (**)

The other representatives of the States Signatory to the Compact who had previously been elected to the Prison Labor Authority were retained on the Authority with Mr. Thorsten Sellin and Mr. Thomas Rickert, the President's representatives of consumer and labor respectively.

On December 10, 1934, in Washington, D. C., the Association of States Signatory to the Compact re-elected the same six members to represent the States Signatory to the Compact and these same officers were selected to carry on for the ensuing year.

(*) Memorandum of March 22, 1935 to Linton M. Collins from V. J. Clarke, Prison Labor Minutes File.

(**) Minutes of Prison Labor Authority Meeting, May 1, 1934, Prison Labor Minutes File.

IV. EFFORTS OF PRISON LABOR AUTHORITY ON ALLOCATION AND DIVERSIFICATION.

From the time the Prison Labor Authority was properly established continuous efforts were made by that Authority through its Secretary and Treasurer, Mr. James V. Bennett, its Economic Adviser, Mr. Howard B. Gill, and the National Recovery Administration, to encourage the allocation and diversification of prison made products and to prohibit the expansion of prison industries whose products entered the public market in proportions unfair to competing private industry. Under Article VII, Section 2 (f) of the Compact, it was not only an objective of the National Recovery Administration but also of those signatory to the Compact to see that prison goods did not bear a disproportionate share of competition in the public market. Moreover, in January, 1934, the Hawes-Cooper Act went into effect, (*) and presumably resulted in some curtailment of prison production of goods to be sold on the open market.

V. PRISON LABOR AUTHORITY REQUIREMENT OF LABELS ON ALL PRISON GOODS IN COMPETITION WITH FREE INDUSTRY GOODS REQUIRING LABELS.

At the meeting of the Prison Labor Authority on October 16, 1934, it was voted that:

> "In all industry requiring the N.R.A. label attached to products, the Compact label shall be attached to a similar product made in prison industries, and any failure to attach the Compact label to such products will be regarded as a violation of the Compact. In case of such violation the Secretary is instructed to notify the Commissioner of Correction, Board of Control or other public agency having charge of the prison industries, and if that does not prove effective to report the matter to the N.R.A., with the request that the President take the matter up directly with the Governor of the State involved." (**)

Thus a policy was established regarding the use of N.R.A. Compact labels by action of the Prison Labor Authority.

VI. ACTION OF PRISON LABOR AUTHORITY ESTABLISHING PRICE POLICY UNDER ARTICLE V, SECTIONS (a) and (b) AND ARTICLE VII, SECTION 2 (d), OF THE COMPACT.

At the meeting of the Prison Labor Authority in Washington, D. C., on October 16, 1934, the Economic Adviser presented the following recommendations as a price policy:

(*) Hawes-Cooper Act, 45 Stat. at large 1084, 48 U.D.C.A. 65.

(**) Minutes of Prison Labor Authority Meeting dated October 10, 1934, Prison Labor Minutes File.

"As provided under the Compact, Article V, Sections A and B, any prison industry shall be authorized temporarily to meet the prices of representative firms in competing areas on comparable products, provided notice and evidence of such prices is filed with the Prison Labor Authority by such prison industries pending investigation and report by the Code Authority. As provided in Article VII, Section 2 (d) of the Compact, notice of such authorizations shall be sent to the Code Authority affected with the request for a report as to whether the representative firms cited are operating properly under the code; if so, the authorizations shall become permanent pending a change in prices, but if the firms cited are not operating properly under the Code and the Code Authority takes steps to rectify the situation, the Prison Labor Authority shall notify the prison industries to conform to a fair current price to be determined. In applying this policy to prison industries operating under the contract system, the contractor shall be regarded as the manufacturer and the cost of products received by him from the prison including cost of manufacturing overhead, material, and labor in addition to the cost of prison labor shall equal the minimum price allowable to the manufacturer."

"On motion made by Mr. Stebbins of Michigan and seconded by Mr. Hannan of Wisconsin, it was voted that the price policy as recommended is hereby approved; and the Secretary and the Economic Advisor are hereby instructed to check carefully any contracts for the labor of prisoners operating under this policy to be sure that such contracts insure a return from the contractor to the State or its political sub-division and/or the prisoner of an amount equal in value to the cost per unit of product for labor and overhead necessarily paid in competing domestic privte industry on the comparable product, as provided in Section V of the Compact". (*)

VII. ACTION OF PRISON LABOR AUTHORITY ON ASSESSMENTS.

At the meeting of the Prison Labor Authority on May 10, 1935, in Washington, the following resolution was voted regarding assessments:

"That no assessments on cotton garments sold by prisons previous to May 1, 1934, shall be made on account of the Prison Labor Authority; that all prison-made cotton garments sold after May 1, 1934, shall be subject to the regular assessment, and that any assessments collected on products sold before May 1, 1934, shall be refunded."

It was further voted that the assessments made by the Prison Labor Authority should conform to the assessments made under private codes in the corresponding industry. Thus the Prison Labor Authority attempted to maintain its assessment upon prison industry products at the same rate which corresponding free industry code authorities assessed their respective industries.

(*) Minutes of Meeting of Prison Labor Authority, October 16, 1934, Prison Labor Minutes File.

VIII. PRISON LABOR AUTHORITY VOTE TO BRING JAILS AND HOUSES OF CORRECTION OF MINOR POLITICAL SUBDIVISIONS WHO BECAME SIGNATORY TO COMPACT UNDER THEIR JURISDICTION.

On May 10, 1935, the Prison Labor Authority voted:

"That jails and houses of Correction who sign the Compact of Fair Competition for the Prison Industries of the United States of America, shall be accepted as coming under the jurisdiction of the Prison Labor Authority."

This action was taken by the Authority with full knowledge that it might involve some difficulty in determining the legal status of action of this type. However, as the Compact of Fair Competition was regarded as a voluntary agreement by the States Signatory thereto, the above action was taken with the understanding that if any House of Correction or Penal Institution of a minor political subdivision wished to become signatory to the Compact it could do so on a purely voluntary basis. As the Supreme Court decision affecting the N.R.A. was rendered on May 27, 1935, no effort was made to encourage the "Jails and Houses of Correction" supported by minor political subdivisions of a state to become signatory to the Prison Compact.

IX. THE ASSOCIATION OF STATES SIGNATORY TO THE COMPACT VITE TO CONTINUE THE PRISON LABOR AUTHORITY AFTER SUPREME COURT DECISION IN SCHECHTER CASE.

At a meeting of the Association of States Signatory to the Compact held in Washington, on June 24, 1935, the following action was taken with reference to the continuance of the Prison Labor Authority:

"On motion made by Dr. McClintic and seconded by Mr. Hunter, it was voted that the Association of States Signatory authorize the Prison Labor Authority to continue to function as an Agency created by order of the President at the request of the Association of States Signatory to carry out the provisions of the Compact of Fair Competition for the Prison Industries of the United States of America; that any amendments to the Compact made necessary by the Act of June 15, 1935, extending and amending the National Recovery Act approved June 16, 1933, shall be submitted to the next meeting of the Authority by a Committee consisting of Thorsten Sellin, E. L. Pardue, John J. Hannan; and that the Secretary and the Economic Advisor are authorized to cooperate with the NRA and especially with the Division of Business Cooperation and with trade associations or other industrial and commercial groups to effectuate the provisions of the Compact.

"On motion made by Mr. Pardue and seconded by Mr. Horton, it was voted that the resolution just passed should be submitted to all of the States Signatory with the request that if they were not represented at the meeting of June 24th, they indicate their vote."

CHAPTER IV

LABELS AND INSIGNIA

I. APPLICATION FOR USE OF N.R.A. LABELS BY THE PRISON LABOR AUTHORITY.

In a letter on April 17, 1934, to General Johnson, from James V. Bennett, Secretary-Treasurer of the Association of States Signatory to the Compact, a formal application was made for the issuance of a N.R.A. label for use on cotton garments manufactured under the terms of the Prison Industries Compact. This letter (a) and a draft of proposed rules (b), governing the issuance of such labels, are in substance quoted as follows:

> "(a) It is respectfully requested that you approve the issuance for a period of not more than three months of an NRA identification symbol for use in cotton garments manufactured under the terms of the Prison Industries Compact of Fair Competition, approved by you on December 9, 1933. Illustration of several proposed types of symbols is enclosed. We prefer type No. 3. There is also enclosed a tentative draft of a rule governing the issuance of these labels.
>
> "We request this authority pending a decision by you on the propriety of requiring the Cotton Garment Code Authority to permit use of their labels on garments manufactured under the terms of the Prison Industries Compact of Fair Competition, or pending your approval of the issuance of a rule by the Prison Labor Authority requiring all manufacturers operating under the terms of the Prison Labor Compact to place an N.R.A. label upon their products.
>
> "Since the labeling provisions of the Cotton Garment Code become effective as of May 1, 1934, and as the Retail Code prohibits any retailer from purchasing or selling any such merchandise not bearing a label it is obvious that goods made under our compact cannot be handled by retailers after that date despite the fact that another provision of the Retail Code would permit their sale, unless the situation is remedied immediately.
>
> "We request this dispensation because of the emergent nature of existing situations. As soon as the representatives of the President, are appointed to the Prison Labor Authority we will

perfect and file with you an appeal for the use of the label of the Cotton Garment Code Authority or request your approval of a rule of our Association requiring the use of a label on goods made under the terms of our compact.

"Some solution of this question is essential or the prison labor Compact will be discarded and former conditions of uncontrolled competition by state institutional industries will follow."

"(b) Pursuant to a motion adopted at a meeting of the Prison Labor Authority, held in the City of Washington on April 13, 1934, and by virtue of the authority vested in the Prison Labor Authority by subsection (g) of Section 2, Article VII, of the Prison Labor Compact of Fair Competition, approved by the National Recovery Administration on December 9, 1933, and

"Pursuant to the requirements of Section 2 and 3 of Article IX of the Code of Fair Competition for the Retail Code, the following rules and regulations effective as of May 1, 1934, are hereby promulgated for the guidance of all concerned:

"(1) All goods, wares or merchandise made in state institutions or subdivisions thereof, adhering to the Prison Labor Compact of Fair Competition shall bear an N.R.A. Identification Symbol whenever similar goods made by industries adhering to codes of Fair Competition are required to bear an N.R.A. label. Each symbol shall bear a serial registration number especially assigned to each state or political subdivision thereof by the Prison Labor Authority in such manner and form as they may determine, with the approval of the Administrator, and which shall be attached to the product sold, shipped or distributed by any signatory to the Compact. Any and all signatories to the Compact may apply to the Compact Authority for a permit to use such N.R.A. symbol, which permit shall be granted only when the application for use thereof shall be accompanied by a certificate of compliance with the Compact signed by the applicant therefor in such manner and form as shall be determined by the Prison Labor Authority by and with the approval of the Administrator, and which permit to use the symbol shall continue in force if and so long as the one to whom the permit is issued shall comply with the Compact and the regulations set up

and approved by the Administrator.

"(2) The Prison Labor Authority, subject to approval by the Administrator, shall establish rules and regulations and appropriate machinery; (a) for the issuance of said identification symbols; (b) for the inspection, examination, and supervision of the practices of states using such symbols; (c) for the purpose of ascertaining the right of said signatory to their continued use; (d) for protecting purchasers in relying on said symbols; and (e) for the purpose of insuring to each state and to individual private employers that the integrity of the symbolism will be maintained by virtue of compliance with the practices contained in the prison industries compact of fair competition.

"(3) The charge made by the Prison Labor Compact Authority for such identification symbols shall at all times be subject to supervision and orders of the Administrator and shall be not more than an amount necessary to cover their actual reasonable cost, including printing, distribution, and administration and supervision of the use thereof as hereinbefore set forth.

"(4) Whenever satisfactory arrangements can be made with any code authority having power to use and distribute N.R.A. labels to the members of their industry, the Prison Labor Compact Authority may procure such labels and issue them to such signatories of the Prison Labor Compact Authority as comply with their orders, rules and regulations." (*)

Prior to the receipt of this letter by the N.R.A., the Prison Labor Authority and the Cotton Garment Code Authority held informal conferences regarding the use of the Cotton Garment Code Authority label on prison-made cotton garments. It was the opinion of Mr. Sydney R. Prince, Jr., Assistant Counsel of N.R.A. that the Prison Labor Authority would be unsuccessful in its attempt to use the same label as adopted by private industry. At a joint conference of these two groups on April 13, 1934, the Cotton Garment Code Authority unalterably opposed the use of its label on prison-made cotton garments. At this conference, the Cotton Garment Code Authority stated that it would not object to the use by prison labor industries of a distinctive label, providing the label clearly identified the issuing authority. However, Mr.

(*) Prison Labor - Insignia and Labels File of Former Public Agencies Division of N.R.A.

Sidney Hillman, Member of the Labor Advisory Board, expressed his opposition to the use of any goods made by prison labor. (*)

It became necessary for the prison industries operating under the Compact to use labels on prison-made products manufactured for sale in the public market. This requirement was necessary because of Article IX, Section 2 of the Retail Code which read as follows:

> "N.R.A. Label:--No retailer shall purchase sell, or exchange any merchandise manufactured under a Code of Fair Competition which requires such merchandise to bear a N.R.A. label, unless said merchandise bears such label. Any retailer rightfully possessing the insignia of the N.R.A. who has in stock or purchases such merchandise which has been manufactured before the effective date of the Code of Fair Competition requiring such merchandise to bear a N.R.A. label may attach thereto the N.R.A. insignia."

However, in a memorandum dated April 24, 1934, from Assistant Counsel Sydney R. Prince, Jr., to Acting Division Administrator, Linton M. Collins, Division 8, the following conclusion was reached:

> "That so far as the product completely made by a state or its institutions is concerned no label is necessary under the Retail Code. Goods made by a private manufacturer using prison labor, however, may not be sold under the Retail Trade Code if they do not bear either the label of the Code covering their manufacture or a substitute for such label."

Therefore, it became necessary for the Prison Labor Authority to have a label so that prison contractors using prison labor in the manufacture of cotton garments might secure an outlet for their products through the regular channels of trade and eventually be sold under the Retail Code.

II. LEGAL DIVISION MEMORANDUM STATING THE ADMINISTRATOR MAY AUTHORIZE THE USE OF N.R.A. LABELS ON PRISON MADE GOODS.

Under date of April 31, 1934, the Legal Division through a

(*) Memorandum, April 14, 1934, from Sydney R. Prince, Jr., Assistant Counsel, to Mr. C. G. Rapheal, Insignia and Labels, Prison Labor Files.

memorandum to Acting Division Administrator, Linton M. Collins, clarifies the question of the Administrator's power to authorize the use of N.R.A. labels on prison-made goods. The part of the memorandum which covers this point is as follows:

> "We are of the opinion that the question of the Administrator's power to authorize the use of N.R.A. insignia, namely, the Blue Eagle, upon prison-made products, is now settled. Administrative Order No. X-9, relating to 'sheltered work-shops', provides as follows:
>
> > "Any sheltered work-shop who signs and complies with such a pledge, shall while so complying, be entitled to use any appropriate insignia of the National Recovery Administration."
>
> "The question of the Administrator's power to allow the use of the N.R.A. insignia upon products not manufactured under a Code is settled in this Order. The use of the N.R.A. insignia by sheltered work-shops is conditional upon their compliance with certain conditions designed to promote fair competition. The prisons operating under the Prison Labor Compact also agreed to conditions which tend to promote fair competition."

III. MEMORANDUM OF ACTING DIVISION ADMINISTRATOR TO ADMINISTRATIVE OFFICER RECOMMENDING N.R.A. LABELS BE AUTHORIZED FOR USE ON PRISON MADE GOODS.

The memorandum of the Acting Division Administrator to the Administrative Officer of April 23, 1934, in part reads as follows:

> "Accordingly I recommend that a label which may be described as follows should be authorized:
>
> > 'The Blue Eagle with the letters N.R.A. without the word 'member' with the words 'We Do Our Part'; followed by the words 'P.L. Registration No. _____'."

IV. MEMORANDUM OF POLICY ADVISERS ON QUESTION OF WHETHER GOODS MANUFACTURED UNDER THE COMPACT SHOULD BEAR N.R.A. LABELS.

On April 26, 1934, the Policy Advisers met to discuss the question of "whether goods manufactured under the Prison Labor Compact should bear a label." The following was the opinion of the group:

"(1) All agreed that prison goods should bear a label.

"(2) All concurred that the labels should be distinctive.

"(3) The question then arose as to how distinctive these labels should be. The advisory group then divided in the following manner on whether or not the letters "P.L.C. License Number" should be on the label:

Mr. Barkin (Labor)
Mr. Bishop (Research and Planning)

definitely were for putting "P.L.C. License Number" on the label.

Mr. Rumley (Industrial)
Mr. Young (Trade Association)
Mr. George (Compliance)

were for leaving off the "P.L.C." and merely putting on the License number.

Mr. Mahoney (Legal)
Dr. Homan (Counsel)

favored including "P.L.C." on the label, but stated that if the Prison Labor Compact Code Authority would not accept the "P.L.C." they be given an emblem of just a license number for the trial period, pending the hearing to determine exactly what label the goods should bear."

George S. Brady, Deputy Assistant Administrator for Policy also favored marking the label with the initials "P.L.C." to distinguish the goods of prison labor, but stated that in view of the background of the situation he thought it inadvisable at this time to impose this restriction upon the adherents to the Compact. After consultation with Mr. Harriman, Divisional Administrator, he found that Mr. Harriman agreed with him on this point. It was, therefore, agreed that the recommendation should go forward to permit the use of the insignia without a "P.L.C." designation, and that it be suggested to the Administrator of the Prison Compact that this matter be reviewed again if it were later shown that prison-made goods had any unfair advantages over free labor goods in the open market.(*)

(*) Memorandum of Meeting of Policy Advisors -.Legal Division, Prison Labor - Labels and Insignia File.

V. POLICY DECISION RULING THAT PRISON MANUFACTURED PRODUCTS UNDER THE COMPACT MAY BEAR AN N.R.A. LABEL.

Under date of April 27, 1934, Policy Decision 6 was signed by Administrative Officer, G. A. Lynch, by direction of the Administrator, after recommended approval by George S. Brady, Deputy Assistant Administrator for Policy. This Policy Decision reads as follows:

> "It is ruled that products manufactured under the Compact of Fair Competition for the Prison Industries may bear N.R.A. Insignia, but not the word 'member'. The insignia or label must be distinctive and must not bear the Code insignia. It must bear the number of the license under which it is issued." (*)

VI. ADMINISTRATIVE ORDER NO V-2 SETTING FORTH REGULATIONS GOVERNING THE USE OF N.R.A. IDENTIFICATION SYMBOLS.

On May 3, 1934, Administrative Order No. V-2 (**) was signed by the Administrator for Industrial Recovery. This Order authorized and empowered the Prison Labor Authority to issue an N.R.A. Identification Symbol using the Blue Eagle. This Order approved certain regulations, particularly describing the N.R.A. Identification Symbol and governing the use of the Symbol by prisons complying with the Compact of Fair Competition of the Prison Industries of the United States of America.

As a result of this action the National Recovery Administration received letters and telegrams of protest. The most important being a telegram from R. B. Paddock, Executive Director of the Cotton Garment Code Authority on May 12, 1934. This telegram reads as follows:

> "Cotton Garment Code Authority strongly urges you hold up action on prison labels Stop We are largest users of NRA labels Stop This matter handled without so much as notice to interested Code Authorities Stop We believe open Public Hearing should be held permitting views of affected industries consideration which up to now has been denied." (***)

(*) Policy Decision 6 and N.R.A. Release No. 6069.

(**) Administrative Order No. V-2, Vol. IX, Page 731, Printed Code.

(***) Labels - Insignia, Prison Labor, Legal Division Files.

As a result of this objection and an application to stay Administrative Order No. V-2, filed by the Cotton Garment Code Authority, the Administration decided to hold a Public Hearing on the question of whether the Prison Labor Authority should be entitled to use N.R.A. Insignia, including the Blue Eagle and whether a stay of Administrative Order No. V-2, as applied for by the Cotton Garment Code Authority, should be granted or denied. (*)

National Recovery Administration Notice of Hearing No. 643 of May 15, 1934, was then issued in order that a public hearing on the application for the stay of Administrative Order No. V-2, could be held on May 28, 1934, in Washington, D. C. (**)

Pursuant to this notice the Public Hearing was held, at which time representatives of free industry (including the Cotton Garment interests) and the prison people presented their arguments publicly concerning the use of N.R.A. labels by the prisons on prison made goods. The position taken by all of the interested parties, including labor, was discussed and a complete copy of these arguments may be found in the transcript of the public hearing.(***)

VII. ADMINISTRATIVE ORDER NO. V-3.

After the Public Hearing was held pursuant to N.R.A. Notice of Hearing No. 643, the Acting Division Administrator in charge of the Compact received reports from the Labor, Consumers and Industrial Advisory Boards, as well as from the Research and Planning and Legal Divisions of N.R.A. All of these reports favored the granting of an N.R.A. Insignia on prison goods made under the provisions of the Compact, with the exception of the one from the Labor Advisory Board. This Board went on record as being opposed to the use of the N.R.A. label on any goods manufactured by prison labor, unless such goods were definitely marked "Prison-Made". (****)

After careful consideration by the Acting Deputy Administrator of the Testimony and evidence entered in the record at the Public Hearing (Transcript of Hearing on Administrative Order No. V-2) and the reports of the N.R.A. Advisory Boards, the Administrator for Industrial Recovery approved Administrative Order No. V-3 modifying Administrative Order No. V-2, and the regulations approved by that Order, but denied the stay of the Order as requested by the Cotton Garment Code Authority. The modification of the regulations of Administrative Order No. V-2, as approved in Administrative Order

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(*) Hearings File, Prison Labor, Former Public Agencies Division, N.R.A.

(**) N.R.A. Release No. 508, May 16, 1934.

(***) Transcript of Hearing on Administrative Order No. V-2, Prison Labor Files, Division 8, N.R.A.

(****) Administrative Order No. V-3, Reports of Advisory Boards, Orders File on Prison Labor, Division 8, N.R.A.

No. V-3, ordered:

"1. That the fourth paragraph of the regulations heretofore approved on May 3, 1934, in Administrative Order No. V-2 is struck out and the following paragraph is substituted therefor:

"(4) The N.R.A. Identification Symbol authorized by these regulations shall be the N.R.A. Insignia heretofore issued to employers under the President's Reemployment Agreement, except that the word 'member' which appears under the letters N.R.A., shall be omitted. Below the words 'We Do Our Part' there shall be placed letters and words in legible print 'Compact', Indent. No.'____.'"

"2. The above described Insignia shall appear on all labels hereafter issued but in no way affect those heretofore issued prior to this date.

"3. The Application for Stay filed by the Cotton Garment Code Authority is hereby denied." (*)

VIII. BUDGET AND AUDIT OF PRISON LABOR AUTHORITY.

After the Prison Labor Authority was duly organized on May 1, 1934, the Association of States Signatory to the Compact loaned this Authority $500 with which to start operation and defray current expenses until such time as the Authority could collect money from the sale of labels and assessments. This loan was repaid to the Association on May 30, 1935. (**) A proposed annual budget for the year May 1, 1934, to April 30, 1935, amounting to $25,000 was voted by the Prison Labor Authority at its meeting of October 16, 1934. (***) At this meeting the Prison Labor

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(*) Administrative Order No. V-3, Code Record Section, N.R.A. and Orders filed Prison Labor Compact File.

(**) Files of the Prison Labor Authority.

(***) Page 11 of Prison Labor Authority Budget and Minutes of the Prison Labor Authority Meeting Of October 16, 1934. Prison Labor Budget File.

Authority approved the following plan of assessments and accounting for the proper conduct of its business:

"The following rules and regulations shall govern the assessment of all contributions to the Prison Labor Authority to defray the attached budget for the Period May 1, 1934 until April 30, 1935.

"1. Each penal institution or prison industry in a State Signatory to the Compact or which otherwise signified its intention to comply with the terms of the Compact as required, shall be subject to an assessment to defray the expenses of maintaining the Prison Labor Authority.

"2. Such assessment or contribution shall be voluntary.

"3. Payments shall be made quarterly on June 15, October 15, January 15, and April 15. The first payment shall be based on the amount of all products sold or other units used as a basis for assessment during the period January 1 to September 30, 1934, and shall be payable at once. Thereafter assessments shall be due and payable on the following dates: January 15, 1935 and April 15, 1935.

"4. Payments shall be made to the Secretary of the PLA who shall be bonded for the faithful performance of his duties. The Secretary shall keep or cause to be kept a separate bank account of all funds received by the PLA. He shall maintain an adequate book-keeping system of all receipts, including assessments levied, collected and uncollected and expenditures, including accounts payable and other commitments, together with proper vouchers therefor. He shall be authorized to enter deposits for and draw checks against the PLA on the presentation of vouchers, such bills to be approved and checks to be signed jointly by a vice-chairman and the secretary to the PLA.

"5. A quarterly audit shall be made by an accredited accountant and his report presented at each quarterly meeting of the PLA in December, March, June and September, and filed with the NRA as required.

"6. Assessments shall be made by industries, and the rate of assessment shall be as nearly as practicable the same as that approved by or submitted to the NRA for the corresponding private industries. All assessments shall be levied against prison products sold and delivered on the open market. A minimum assessment of $25 shall be made on any industry; but if any member of the industry subject to this assessment justly complains that this is an undue burden, the PLA will adjust the matter, subject to the disapproval, if any, of the N.R.A."

"The following shall be established as the rates of assessment in the industries named:

*Binder Twine - $.0001 per lb.

Brooms - $.015 per doz. for household and domestic brooms.
$.005 per doz. for toy and whisk brooms.

Brick - $.06 per M for common brick.
$.10 per M for face brick.

Canned Products - $.001 per case.

Coal - $.005 per ton.

Clay Products - 1/2% on total sales.

Cotton Garments - $1.00 per M for underwear; $1.50 per M for work shirts;
$2.00 per M for work pants, overalls, coats, and other garments.

* Cotton Textiles - $.015 per active spindle annually.

Crushed Stone, Sand and Grave - $.05 per M tons.

* Farm Equipment - 1/10% on total sales. Binders $.10 each, mowers $.035, dump rakes $.02 side delivery rakes $.04, hay loaders $.04, cultivators $.035.

Furniture - 1/2% on total sales.

Hosiery - 1/10% on total sales.

Hollow-ware - 1/10% on total sales.

Ice - $.006 per ton.

Leather Goods - 1/5% on total sales

Rock Wool - 1/2% on total sales.

Saddlery - 3/20% on total sales.

9742 Shoes - 3/100% on total sales.

"As bases for assessment for other code authorities in which similar industries are carried on in prisons are submitted or approved by the NRA, such rates shall also apply to corresponding prison industries."

" * No official rate approved by or submitted to NRA, but rate adopted after consultation with prison industry involved." (*)

The following is the amount of income estimated under the budget from May 1, 1934 to April 30, 1935.

"Estimated Income - May 1 1934 - April 30, 1935.

Sales of Cotton Garments and Underwear Labels . . .	$15,000.
4313 M work pants @ $2 per M.	
1720 M work shirts @ $1.50 per M.	
3797 M Underwear @ $1.00 per M.	
Assessment on Sale of Binder Twine	
35,000,000 lbs @ $.0001 per lb.	3,500.
Assessment on Sale of Farm Equipment	
$1,175,000 @ $.001.	1,175.
Assessment on Sale of Cotton Textiles	
22,144 spindles @ $.015 per active spindle. . . .	325
Assessment on Other Industries	
Basis of contribution same as in Private Industry	5,000.
TOTAL ESTIMATED INCOME.	$25,000."

During the time the Prison Labor Authority was actively functioning under the National Recovery Administration, that Authority filed with the NRA audit reports containing balance sheets and income and expense statements covering the following periods:

1. June 1, 1934 to August 31, 1934
2. June 1, 1934 to November 30, 1934.
3. May 1, 1934 to February 28, 1935.

and an annual audit report for the fiscal year which ended April 30, 1935. The first three of these audit reports were made by Mr. F. D. LaVallee, an employee of the Bureau of Federal Prisons, while a fourth and annual audit report was made by the firm of Councilor & Buchanan, certified Public Accountants of Washington, D. C., and New York.

The following is a statement of the cash receipts and disbursements of the Prison Labor Authority for the fiscal year ending April 30, 1935.

(*) Appendix to Prison Labor Budget as proposed at October 16, 1934 Meeting of Prison Labor Authority.

"PRISON LABOR AUTHORITY

WASHINGTON, D. C.

CASH RECEIPTS AND DISBURSEMENTS

FOR THE FISCAL YEAR ENDED APRIL 30, 1935.

RECEIPTS:			
From Sales on Labels			$7,013.97
Advance Payments on Sales of Labels			146.37
Assessment of Members:			
Binder Twine	$3,800.99		
Cotton Yardage	251.50		
Sundry Garments	774.68		
Brick	6.91		
Brooms	168.31		
Farm Implements and Machinery	530.91		
Foundry	170.00		
Furniture	106.80		
Harness	163.55		
Hosiery	170.00		
Coal	340.00		
Shoes	37.09		
Quarry	.34	6,521.08	
Total Receipts			$13,681.42
DISBURSEMENTS:			
Salaries:			
Chief Executive Officer	$5,250.00		
Stenographic and Clerical	1,586.61	$6,836.61	
Travel		1,133.16	
Rent		420.00	
Telephone and Telegraph		356.75	
Stationery and Supplies		174.36	
Postage		128.52	
Printing and Mimeographing		166.65	
Auditing		90.00	
Furniture and Fixtures		40.66	
Miscellaneous		28.48	
Labels - Printing cost		1,612.39	
Labels - Shipping Cost		63.32	
Total Disbursements			$11,050.90
BALANCE - APRIL 30, 1935:			
On Deposit in Bank		$2,627.90	
Petty Cash Fund		2.62	$2,630.52

This same accounting firm made another audit report of the Prison Labor Authority's activities for the period May 1, 1935. Below is their statement of receipts and disbursements for this period which is the last received by the NRA.

9742

"PRISON LABOR AUTHORITY

WASHINGTON, D. C.

STATEMENT OF INCOME AND EXPENSE

FOR THE PERIOD MAY 1, 1935 TO JUNE 15, 1935"

INCOME:			
Sales on Labels	$685.00		
Less Cost of Sales - Printing	244.00		
Gross Profit on Labels		$ 441.00	
Assessments Received:			
On Sales on Sundery Garments	$953.98		
On Sales of Harness	442.60		
On Sales of Whips	55.64		
On Sales of Metal Wire Goods	10.00		
Total Assessments Received		$1,462.22	
Total Income			$1,903.22
EXPENSE:			
Salaries:			
Chief Executive Office	$750.00		
Stenographic and Clerical	335.00	1,085.00	
Office:			
Rent	$ 56.25		
Telephone and Telegraph	84.87		
Stationery and Supplies	33.92		
Postage	4.96		
Printing and Mineographing	27.20		
Miscellaneous	1.60	$ 208.80	
General:			
Travel - Members of Code Authority	$205.69		
Travel - Chief Executive Officer	173.79		
Postage and Labels	5.43	384.91	
Total Expense			$1,678.71
NET INCOME			$ 224.51 (*)

(*) Audit Reports of Prison Labor Authority, Prison Labor Budget File.

The Supreme Court decision of May 27, 1935 affecting N.R.A., had a far reaching effect on the activities conducted under the Prison Labor Compact. The Prison Labor Authority ceased the issuance of labels and the collection of assessments from the state prisons and the result was that the Prison Labor Authority had no means of financing itself except through voluntary contributions from the States. In view of the fact that the competing Code Authorities could not enforce their codes it then became unnecessary for the Prison Labor Authority to attempt to enforce the Compact.

On November 6, 1934, Mr. Saul Nelson of the Research and Planning Division of NRA submitted a memorandum to Acting Division Administrator, Linton Collins, stating as follows:

> "A proposed budget and basis of contribution has been submitted by the Authority for the Prison Labor Compact in the sum of twenty-five thousand ($25,000.00) dollars for the fiscal year between May 1, 1934 and April 30, 1935.
>
> "Assessments under the provisions of this budget are to be purely voluntary, consequently this budget will not be submitted for formal approval by the Administration and this memorandum is purely advisory in nature.
>
> "An analysis of this budget indicates that it has been very carefully prepared and conforms meticulously with all the various requirements of this Division, with reference to the approval of mandatory budgets. The totals seem reasonable, the items seem adequately explained and the basis of contribution appears to be equitable.
>
> "In view of the voluntary nature of contributions under this budget, no further comment will be offered by this examiner." (*)

Although the Compact was continually recognized as a voluntary agreement between the States Signatory thereto and the National Recovery Administration, Mr. Hiram S. Brown, Assistant to the Administrative Officer, submitted a letter to Mr. Howard B. Gill, Economic Adviser of the Prison Labor Authority on April 9, 1935, advising him of tentative approval of the budget previously submitted by the Prison Labor Authority. This action was taken to conform with the requirements of Executive Order No. 6859 and in compliance with Administrative Order No. X-136. (**)

(*) Prison Labor Budget File, Former Public Agencies Division.

(**) See Vol. XXI-Page 633 Printed Code.

CHAPTER V

COMPLIANCE

I. FORM CONTAINING INSTRUCTIONS TO COMPLAINANTS.

Shortly after the approval of Administrative Order No. V-2, the Legal Division of N.R.A. prepared instructions to complainants against unfair prison competition.(*) These instructions were sent out by the N.R.A. to all Code Authorities. They were also furnished to anyone interested in effecting compliance of State Prisons signatory to the Compact. One of the provisions of the Compact, Article VII, Section 2(g), gave the Prison Labor Authority as created under Article VII, Section 2 of the Compact, the power "to hear and adjust complaints arising under this Compact made by effected parties: provided, however, that at the time any such complaint is made the complainant must agree to submit such facts and figures as may be necessary to the determination of the issued involved."

The letter of instructions further states:

"Any complainant who is covered by a Code should forward to his Code Authority his complaint. Accompanying his complaint he should forward the facts and figures which sustain his complaint and which are necessary to the determination of the issues, or in the alternative he should indicate his willingness to appear before the Prison Labor Authority and present such facts and figures. The Code Authority should forward this complaint, together with any other complaints of the same nature, to the Prison Labor Authority, c/o J. V. Bennett, Tower Building, Washington, D. C. The Code Authority should then request that the complainant be granted a hearing before the Prison Labor Authority. The Code Authority may send such representative or representatives as it wishes to this hearing. (One copy of each complaint and of the supporting papers should be enclosed.)

"It is also provided in the Compact that it shall be a power and duty of the Prison Labor Authority:-

> "To determine, after conferring with the Code Authority of the Industry affected and upon request of any person or firm affected, the prices, charges and amounts provided for in Article V, Sections A and B hereof, such determination to be subject to appeal to the President of the United States."
> Article VII, part of Section 2(d)

"The representative or representatives sent by the Code Authority to the hearing should be authorized by the Code Authority to express its view of the matter at the hearing.

(*) Appendix No. A

"In the Compact it is made the duty of the Prison Labor Authority to determine the fair current price which is to prevail in a given market when complaint is made.

"The subscribing States have also agreed that prison labor will not be contracted to provide manufacturers for small return which would affect competing outside labor. This part of the agreement is contained in Article V, Section (b). If there is any complaint alleging the non-observance of this latter provision, the complainant should follow the same procedure in submitting his complaint.

"The various Code Authorities have been informed of their rights to co-operate in this matter. They also have a copy of these instructions and we feel sure that any well-founded complaint will receive careful consideration from the appropriate code authority."

II. AUTHORIZATION OF PRISON LABOR AUTHORITY TO HEAR AND ADJUST COMPLAINTS UNDER ARTICLE VII, SECTION 2 (h) OF THE COMPACT.

The Compact made it a duty of the Prison Labor Authority "to hear and adjust complaints arising under this Compact made by Prison Administrators or Prison Heads, and call to the attention of the President any unfair trade practices designed to discriminate against prison-made goods or hamper objectives sought in the preamble of this Compact."

III. CERTIFICATE OF COMPLIANCE AND APPLICATION FOR NRA LABELS.

Following the approval by the Administrator of Administrative Order No. V-2, a Certificate of Compliance and Application for NRA labels was prepared by the Legal Division, and printed for distribution to the State prisons which were eligible to sign such Certificate of Compliance. It will be noted that on the reverse side of this Certificate was printed instructions covering the use of labels on prison made goods. The Certificate provided as follows:

Certificate of

COMPLIANCE AND APPLICATION FOR

N.R.A. LABELS

Under the Compact of Fair Competition for
Prison Industries.

"The undersigned has read and understands the terms and conditions of the Compact of Fair Competition for Prison Industries, adopted and approved by the President on April 19, 1934, and the instructions adopted by the Prison Labor Authority pursuant thereto appearing on the back hereof."

"The undersigned hereby certifies that he is complying with all the provisions of the Compact and with all the Regulations duly adopted thereunder pursuant to the Compact, and hereby applies to the Prison Labor Authority for labels adopted by and issued by such authority by virtue of an order issued by the Administrator for Industrial Recovery, May 3, 1934.

"The undersigned further represents that if and when labels are issued to him, he will use such labels only on articles manufactured in compliance with the provisions of the Compact and only so long as he continues to comply with all of the provisions of the Compact and any amendment thereto or any rules adopted thereunder for all the products which he manufactures or sells.

"The undersigned further represents that all labels if and when issued to him shall be attached or sewn securely so that the full face of the insignia shall be readily visible for inspection."

_____

Name of Officer Authorized to Sign

_____

Title

Approved by:

_____

Warden, Superintendent or State Officer Responsible

Date_____

The instructions on the reverse side of the Certificate are as follows:

INSTRUCTIONS

Governing the Use of Labels on Prison Made Goods

"1. All goods, wares or merchandise made in whole or in part, in the penal or correctional institutions of any state which is adhering to the Compact of Fair Competition for the Prison Industries of the United States of America, or made in such institutions of any political division of such states, will bear an N.R.A. Identification Symbol when offered for sale in the open market.

"2. The right to use the N.R.A. Identification Symbol or Label is granted to any prison industry only on compliance

with the provisions of the Compact and the Regulations issued thereunder; and may be withdrawn for violating the compact or the regulations governing their use.

"3. Permission to use labels on prison made products is granted to the Warden or Superintendent or other responsible official of any prison, jail, house of correction, reformatory, or other correctional institution on application to the Prison Labor Authority.

"4. Such applications are to be made in writing on a form known as "Certificate of Compliance" and signed by the manager or the contractor or sub-contractor who operates such prison industry and approved by the Warden, Superintendent, or other responsible official of the prison or correctional institution under whose authority the prison industry is conducted.

"5. Orders for labels are to be made on forms approved by the Prison Labor Authority and accompanied by a check or money-order in full payment of the scheduled charge for the labels.

"6. Labels will be issued only in such amounts as may be determined by the Prison Labor Authority, not exceeding two months' supply. The Authority, however, will issue labels in excess of such amounts at special periods to meet seasonal or unusual demands. Any unused labels may be promptly returned for credit to the Authority.

"7. The Prison Labor Authority will cause to be made such investigation of the operations of applicants and their records as may be necessary to insure compliance with the terms of the Compact."

IV. CODE AUTHORITY FIELD LETTER NO. 5.

The National Recovery Administration on May 26, 1934, issued a Field Letter to all Code Authorities titled "Rights of Code Authority to Co-operate in Correcting Unfair Prison Competition." This letter was issued by direction of the Administrator and signed by G. A. Lynch, the Administrative Officer of N.R.A. In addition to general information concerning the compact, it also explained the "Handling by Code Authorities of the Complaints Against Unfair Prison Competition Arranging Basis of Competition." Another portion of the letter referred to "Securing Observance of the Compact".

The body of the letter read as follows:

"A copy of the agreement between twenty-nine states known as the Prison Labor Compact has been forwarded to all code authorities. The National Recovery Administration is charged with certain duties with respect to this Compact and the several code authorities have

certain valuable rights of cooperation under this Compact.

"Accompanying this you will find a copy of 'Instructions to Complainants Against Unfair Prison Competition'. A more detailed explanation of the nature and purposes of this Compact will be found in the accompanying instructions.

"Briefly it may be stated here that the Compact is intended to promote fair competition on the part of the prison industries. The Compact was approved by the President in an order dated April 19, 1934. The report of the Administrator for Industrial Recovery to the President on this Compact gives a valuable resume of its nature and purposes.

"In this Compact it is agreed by the Subscribing states that prison products sold by them will not be sold below the fair current price prevailing in the market in which the product is customarily sold. It is also agreed, that the prison contracting the labor of their prisoners will charge the manufacturer, per unit of the product, for the labor and overhead supplied, the amount necessarily paid by competing private industry. See Article V, Sections (A) and (B).

"It is made the duty of the Prison Labor Authority, which was created under Article VII, Section 1, to hear and adjust the complaints of affected parties. Article VII, Section 2 (g).

"It is the duty of the Prison Labor Authority, to determine after complaint is made, the fair prevailing market price with which prison products are to comply and also the fair charges for contract prison labor. Under this same article, the prison labor authority is required to confer with the code authority of the industry affected before making these determinations. Article VII, Section 2 (d).

Handling by Code Authorities of the Complaints Against Unfair Prison Competition Arranging Basis of Competition

"As you will note in the accompanying "Instructions to Complainants Against Unfair Prison Competition" all complainants are directed to send their complaints to their code authority. The code authority after making such study of the complaint and collecting such information as they deem necessary about the complaint should forward it to the Prison Labor Authority care of Mr. J. V. Bennett, Tower Building, Washington, D. C. For the convenience of everyone, the code authority should attempt to forward at the same time any other complaints from members of their industry concerning unfair prison competition. If the complainant does not intend to appear personally or by representative before the prison labor authority, he should

submit in writing facts and figures showing the unfair competition with which he is faced. A copy of the complaint and any supporting papers should be forwarded at the same time. The code authority should request a hearing of the complaint by the Prison Labor Authority. The Code Authority may send a representative or representatives to the hearing. The representative should be authorized to express the view of the code authority on the matters which will be determined by the Prison Labor Authority.

"If the prison competition is of sufficient importance, a joint conference by the code authority and the Prison Labor Authority may be arranged upon request.

"Under Article VII, Section 2, the acts and determinations of the Prison Labor Authority are subject on appeal or review to disapproval or modification by the President. This power has been delegated by the President in the aforesaid Executive Order of April 19 to the Administrator for Industrial Recovery.

"No code authority may pass upon or adjudicate any matter pertaining to a contract between a prison and a contractor or coming under the jurisdiction of the Prison Labor Authority but must submit any complaints or objections arising thereunder to the Prison Labor Authority.

"The questions affecting this Compact will be referred to Division Eight in Washington, and correspondence should be addressed to Division Administrator Division Eight.

Securing Observance of Compact

"The several Code Authorities have certain valuable rights in securing and enforcing the observance of the Prison Labor Compact by the prisons of the subscribing states. The prevailing price and fair charge which are to be determined by the Prison Labor Authority, as mentioned above, must be observed by all of the prisons of every subscribing state. In case any prison violates the duly determined fair prevailing price or charge, the N.R.A. insignia may be withdrawn. An N.R.A. insignia for the use of the prisons of a subscribing State has been heretofore authorized by Administrative Order. This insignia is issued to each prison of a subscribing state which signs a certificate of compliance. The Prison Labor Authority has the right to withdraw this insignia. If the insignia should be withdrawn from a particular prison, retailers would be forbidden by Article IX, Section 2 of the Retail Trade Code, from purchasing, selling, or exchanging any merchandise thereafter manufactured by such prison.

"A complaint alleging the violation by a prison of a fair prevailing price or fair charge provision should be forwarded to the Prison Labor Authority through the Code Authority covering the particular Industry. The Prison Labor Authority will call a hearing on this complaint. The Code Authority involved is entitled to representation at the hearing. The right to appeal to the National Industrial Recovery Administration upon a determination on a complaint of violation is full and complete under Article VII, Section 2."

V. COMPLAINTS

The following are a few of the major complaints received by the NRA against prison products:

Complaint of Steel Locker Industry against the Attica, New York Prison --- Claim that the bids on steel lockers by the prison was far below bids of free industry.

This was referred to Dr. Walter H. Thayer, Jr., member of the Prison Labor Authority in New York state by the Administration and was investigated by him and copy of his investigation was sent to the Secretary, Steel Locker Industry. There was a misunderstanding on the part of the Attica prison as to the number of openings in lockers and therefore their bid was lower than it should have been.

Complaint received from the Label Review Officer of the Cotton Garment Code Authority that the Oklahoma prison was sewing on labels, partly concealing the word Compact.

The Administration wrote the warden of the prison asking that he correct this matter and also referred the matter to the Prison Labor Authority who likewise wrote him. Letter has been received from the warden that this method of sewing on the labels has been corrected and the Label Review Officer of the Cotton Garment Code Authority has been so notified,

Several Complaints have been received from the Marking Device Industry concerning unfair competition of the prisons in the making of automobile tags.

More than 80% of these license tags made by the prisons are for state use and are not put on the open market. This is a good example of a state use industry.

Complaint received from Benjamin T. Crump, Co., Inc. against the Kentucky Whip and Collar Co., -- Stated that the prices of the Kentucky Whip and Collar Company were considerably below prices of free industry.

This Complaint was referred to the Prison Labor Authority by the Administration with the request that an investigation be made. A conference was held between the Prison Labor Authority and the Saddlery Industry Code Authority with members of the above companies and a satisfactory agreement to all parties was reached.

Complaint received from the Diamond Whip Co., of Chicago, Illinois, against the State Prison at Moundsville, West Virginia, that the prices at which the prison sold whips was considerably below the price of free industry.

This complaint was referred to the Prison Labor Authority and was handled by that Authority in the same manner as the complaint against the Kentucky Whip and Collar Co., that is, a conference was held between prison officials at Moundsville and the Saddlery Industry and Prison Labor Authority and a satisfactory agreement reached.

Complaint received from J. J. McIntosh Sons, Corp., of Tipton, Indiana against the Indiana Prisons concerning the sale of prison-made brooms on the open market without any identification label.

This matter was referred to the Prison Labor Authority. The Authority asked Mr. Hanagan of the Indiana prison industries to confer with some members of the McIntosh Company to see if some satisfactory arrangement could not be made. Sucha conference was held, but under the Compact, it is not necessary for brooms to have a label and neither is there any law in the State of Indiana forbiding the sale of prison products on the open market. Therefore, this does not come within the scope of the Prison Labor Authority.

Complaints received from the Belmont Trap Rock Company, Ind., of Staunton, Virginia and the Powhatan Lime Co., of Richmond, Virginia, against the State Lime Grinding Plant, which uses convict labor.

Virginia is not a signatory to the Compact and also operates under the State Use System, therefore, this matter does not come under the jurisdiction of the Prison Labor Authority or the Administration.

Several Complaints received against the Gatch Brush and Wire Goods Company of Baltimore using convict labor and that their prices were considerably below that of free industry.

As the convict labor used by this company is from the City Jail in Baltimore, the Administration and the Prison Labor Authority have no jurisdiction over them

under the Compact. The Gatch Brush and Wire Good Company has expressed its desire to cooperate at such time as they may come under the Compact of Fair Competition.

Complaint received from E. C. Stammerjohn of Boonville, Missouri against the Missouri Training School for Boys of that City. Unfair competition in flower business.

This was referred to the Prison Labor Authority who referred it to Mr. Stephen B. Hunter, Director of the Missouri Penal Institutions with the request that he straighten this matter out. Mr. Stammerjohn was asked to furnish affidavits substantiating his complaint that the prison prices were much lower than his.

Complaints received from the Cotton Garment Code Authority and many nationally known clothing manufacturers against the proposed contract of the Kentucky State Department of Public Welfare and the Ruffino Shirt Company of Nashville, Tennessee.

Public hearing was held on this Kentucky contract and the Kentucky officials agreed to write a new contract, However, from the records available the State of Kentucky did not enter into the new contract.

In addition there had been many minor complaints and objections filed concerning the methods used by prisons and prison contractors in disposing of their manufactured or processed articles. In the majority of cases, these were disposed of by referring them directly to the Prison Labor Authority where practically all were settled amicably. There was, however, objection on the part of the Cotton Garment Manufacturing Industry against the placing of prison manufactured cotton garments on the open market. During the months of January, February and March, 1935, the Public Agencies Division of N.R.A. received several petitions which had been forwarded to Mr. Donald Richberg, Chief Counsel of N.R.A. from the United Garment Workers of America, District Council, No. 4, of St. Louis, Missouri.(*) These petitions protested against any form of an N.R.A. label on prison-made cotton garments. On March 6, 1934, a letter was submitted to the above mentioned Council of the United Garment Workers of America by V. J. Clarke, Assistant Deputy Administrator, Public Agencies Division, N.R.A., informing the Council that prior to the adoption of a NRA insignia as set forth in Administrative Order No. V-3, the question involving the use of N.R.A. labels on prison-made products was presented to the public in general in the form of a public hearing on May 28, 1934, at Washington, D.C. The hearing lasted throughout the entire day and the question was discussed at considerable length by both representatives of prison institutions as well as representatives of organized labor. Further the American Federation of Labor

(*) See petition submitted to N.R.A. by United Garment Workers of America, District Council No. 4, St. Louis, Mo., United Garment Workers of America File. Prison Labor Files.

was represented at this hearing by its Secretary, Mr. Frank Morrison, and that the contentions of the labor groups as set forth in the above mentioned petitions were ably presented at that time. (*)

When satisfactory settlement regarding complaints could not be reached after representatives of the complaining Code Authorities and industry had conferred with the Prison Labor Authority, the NRA would request the Prison Labor Authority to hold a hearing as provided for under Article VII. Section 2 (g) of the Compact. The outstanding case which the Prison Labor Authority handled involved the refusal to sell labels to a prison contractor. In this case the Huffine Shirt Company of Nashville, Tennessee, entered into what purported to be a prison labor contract with the Department of Public Welfare of Kentucky which supervised the State Penitentiary at Eddieville, Kentucky. At the public hearing on this question the legality of this proposed contract was questioned because it lacked any specific element of consideration. However, the Prison Labor Authority, after a hearing, decided that it would not sell labels to the Huffine Shirt Company or the State of Kentucky under the terms of this contract because there was no assurance that the Prison contractors would comply with the terms of the Compact. (**)

Furthermore it was felt that for the State of Kentucky to engage in the contracting of its prisoners for the manufacture of work shirts would not assist in prohibiting the expansion of an existing prison industry which already bore a disproportionate share of competition as provided for in Article VII, Section 2 (f-2).

VI. COMPLIANCE DIVISION COMPLAINTS.

After the Prison Labor Authority was formally organized on May 1, 1934, practically all complaints against prison-made goods were adjusted by that Authority. However, Division Eight of the N.R.A. did handle such complaints as were filed with the Compliance Division by referring them to the Prison Labor Authority for settlement. As the Compact was a voluntary agreement no compliance cases were taken into court. All questions involving compliance difficulties were handled in a cooperative manner by the complainant Code Authorities,

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(*) For further complaints of various natures against prison-made cotton garments by the Cotton Garment Code Authority and the National Work Shirt Manufacturers Association, see Prison Labor File titled "Cotton Garment Code Authority and National Work Shirt Manufacturers," Former Public Agencies Division, N.R.A.

(**) Kentucky Prison Contracts. Prison Labor File.

the Prison Labor Authority, the Compliance Division and Division Eight of N.R.A. under the direction of Acting Division Administrator, Linton M. Collins.

VII. NATURE OF COMPLAINTS.

The following classification is an appraisal of the nature of complaints broken down into five general groups.

(1) Complaints based upon the contention that the prisons were selling prison-made goods in competitive areas below the price for which free industry goods was selling in the same areas - 70%.

(2) Complaints concerning the sale of prison-made goods in states operating under the Hawes-Cooper Act or under a potential State Use System - 10%.

(3) Complaints concerning the improper sewing on prison-made goods of the Compact label for the apparent purpose of hiding identity of where the goods was manufactured - 5%.

(4) Complaints against various prison institutions attempting to increase prison production or contract for new products - approximately 10%.

(5) Complaints of a miscellaneous nature - 5%.

VIII. INDUSTRIES MOST ACTIVE IN ENTERING COMPLAINTS AGAINST PRISON MADE GOODS

Although the Cotton Garment Industry Code Authority and the various national associations connected with the Cotton Garment Manufacturing Industry were most active in entering complaints and protests with the National Recovery Administration against the sale of prison-made products on the public market, the following industries were outstanding in filing complaints and protesting against prison production affecting their industries.

1. The Twine and Cordage Manufacturing Industry.
2. The Marking Devices Industry.
3. The Saddlery and Leather Goods Manufacturing Industry.
4. The Farm Equipment Manufacturing Industry.
5. The Furniture Manufacturing Industry.
6. The Stove and Stove Casting Manufacturing Industry.
7. The Crushed Stone Industries.
8. The Brick, Tile and Reenforced Pipe Manufacturing Industries.

IX. OTHER INDUSTRIES AFFECTED BY PRISON COMPETITION

In addition to those industries there are other industries affected by prison production making a total in all of some sixty industries. (*)

(*) Appendix No. 3.

CHAPTER VI

ULMAN COMMITTEE REPORT

1. 36-HOUR WEEK FOR COTTON GARMENT INDUSTRY.

By Executive Order No. 6828, Amendment No. 7, to the Code of Fair Competition for the Cotton Garment Industry was approved on August 21, 1934. Parts II and III of the Amendment changed the maximum hour (Article III) and minimum wage (Article IV) provisions of the Code. (*) The 40-hour work week of the Cotton Garment Industry Code resulted in unfair competition between members of the apparel industry under it and members under other apparel codes which had provisions for thirty-five and thirty-six hour weeks. In order to bring about more reemployment and correct the unfair competition existing because of the Cotton Garment Industry Code forty hour work week provision, it became necessary to make a reduction to thirty-six hours, and, at the same time, make a proportionate increase in pay of employees so as to maintain the same weekly wage rate as provided in the approved Code of November 17, 1933.(**)

On September 28, 1934, an Executive Order of an Administrative nature, No. 118-132, pertaining to the Cotton Garment Industry Code was approved by the President. This Order stayed Executive Order No. 6828 of August 21, 1934, to and including October 15, 1934. (***) It directed the National Industrial Recovery Board to appoint an impartial committee of three persons to hear protests, investigate the facts and report recommendations to the President no later than October 10, 1934, on the Amendment of Articles III and IV of the Cotton Garment Code, approved August 21, 1934.

The Committee appointed by the National Industrial Recovery Board consisted of D. M. Nelson, Member of the Industrial Advisory Board; Willard Hotchkiss, Chairman of the NRA General Code Authority, and W. Jett Lauck, economist. This Committee (frequently referred to as the Hotchkiss Committee on Cotton Garments) submitted their report in compliance with the President's request and recommended that Executive Order No. 6828 of August 21, 1934, be sustained. They also recommended that the National Industrial Recovery Board designate a commission to investigate the effect of competition of products of prison labor and of sheltered workshops on certain subdivisions of the Cotton Garment Industry to study the operation of the Prison Labor Compact, especially as to the enforcement of standards of competition of private industry there setup, and report not later than December 1, 1934, upon ways and means of effectively meeting this issues. (****)

(*) See Volume XV, Page 387 Printed Code.
(**) Administrator's Letter of Transmittal to President of Amendment No. 7, August 21, 1934.
(***) See Volume XVII, Page 523 Printed Code.
(****) Appendix No. C --N.R.A. Release No. 8314.

II. EXECUTIVE ORDER NO. 118-135, OCTOBER 12, 1934.

On October 12, 1934, another Executive Order of an Administrative nature, No. 118-135, pertaining to the Cotton Garment Industry Code was approved by the President. Among other matters concerning the Cotton Garment Industry the Order provided:

> "That the National Industrial Recovery Board forthwith appoint a committee of three impartial persons, which committee shall investigate the effects of competition between the products of prison labor and sheltered workshops on the one hand and of the cotton garment industry on the other, study the operation of the Prison Labor Compact especially as to the enforcement of the standards of competition with private industry established therein, and report to the National Industrial Recovery Board concerning said matters not later than December 1, 1934."(*)

In accordance therewith the Ulman Committee was appointed. This Committee consisted of Judge Joseph N. Ulman, as Chairman, Frank Tannenbaum and W. Jett Lauck. Mr. James P. Davis of the Division of Research and Planning of NRA, was selected as secretary to the Committee.

III. POINTS CONCERNING PRISON LABOR COVERED BY THE INVESTIGATING COMMITTEE.

The Committee started holding hearings on November 7, 1934, and continued through until November 26, 1934, when they submitted their report to the National Industrial Recovery Board. (**)

The following was taken from the letter of transmittal accompanying the report of the Committee to the National Industrial Recovery Board, covering the points considered by the Committee in arriving at its conclusions:

> "In order to consider adequately the relatively narrow questions that have arisen and will arise between the Prison Labor Authority and the several Code Authorities administering industries subject to prison labor competition, we have taken into account the whole question of prison labor as it is related to
>
> (a) the underlying purposes of imprisonment for crime;
>
> (b) the economical and effective administration of prisons;
>
> (c) the extent and effects of competition between prison labor and free labor in specific industries;
>
> (d) the developed policies of State and National governments in relation to the whole subject;

(*) See Volume XVIII Page 621, Printed Code.
(**) Appendix D, NRA Release No. 9029-A

(e) attitudes of industry;

(f) attitude of labor;

(g) the relationship of a proper regulation of prison labor to a rational attack upon the problem of crime." (*)

IV. LIST OF PERSONS APPEARING BEFORE ULMAN COMMITTEE REPRESENTING INDUSTRY, ORGANIZED LABOR, PRISON ADMINISTRATORS AND NRA OFFICIALS

The following persons appeared before the Committee and made statements for the record and answered inquires from the Committee Members. Those representing Industry were:

Raymond A. Walsh, General Counsel,
Cotton Garment Code Authority.

R. B. Paddock, Executive Director,
Cotton Garment Code Authority.

Ben Geaslin, Assistant Counsel,
Cotton Garment Code Authority.

A. B. Dickinson, Washington Representative,
Cotton Garment Code Authority.

Herbert Mayer, Chairman, Prison Committee,
Cotton Garment Code Authority.

A. B. Salent of Salent and Salent, Incorporated.

Isadore Fine, President,
National Workshirt Manufacturers Association.

Harry Johnson, Oberman and Company.

W. W. Harlin, Prison Committee, Cotton Garment Code.

C. F. Habegger, Prison Committee, Cotton Garment Code.

L. M. Jones, Prison Committee, Cotton Garment Code.

Walter Mitchell, Jr., Executive Secretary,
Furniture Manufacturers Code Authority.

D. P. Porterfield, Director,
Department of Marketing, United Typothetae

J. H. Nelson, Secretary, Trade Practice Committee,
Public Seating Industry.

W. C. Craig, Chairman,
Binder Twine Agency of Code Authority.

(*) Appendix No. D -NRA Release No. 9029-A.

J. S. McDaniel, Executive Secretary.
Cordage and Twine Code Authority.

Those representing Organized Labor were:

Thomas Rickert, President, United Garment Workers.

Charles N. Green, International Ladies Garment Association.

William C. Rushing, American Federation of Labor.

G. E. Meadows, American Federation of Labor.

Rose Schneiderman, Labor Advisory Board,
National Recovery Administration.

Jacob Petofsky, Assistant President,
American Clothing Workers.

Sidney Hillman conferred with the Committee in his dual capacity as President of the Amalgamated Clothing Workers and Member of the Labor Advisory Board; However, his statement is not included in the stenographic transcript of the hearing.

Those representing the Penal Institutions were:

Sanford Bates, Director, Federal Bureau of Prisons.

James V. Bennett, Secretary,
Prison Labor Authority.

Howard B. Gill, Economic Adviser,
Prison Labor Authority.

Walter N. Thayer, Commissioner,
Department of Correction, New York State

H. H. Stewart, Superintendent,
Prison Industries, State of Alabama.

Robert Chapman, Superintendent,
Prison Industries, Missouri State Prison.

L. E. Kunkle, Warden, Indiana Penitentiary.

E. L. Pardue, Superintendent,
Industries State of Tennessee.

C. L. Stebbins, Superintendent,
Michigan State Industries.

Samuel E. Brown, Warden, Oklahoma Penitentiary.

H. E. Donnell, Superintendent,
Prisons of State of Maryland.

Those representing the National Recovery Administration were:

Linton M. Collins, Acting Division Administrator,
National Recovery Administration.

J. M. Keating, Legal Adviser of Dress Manufacturers
Code Authority; formerly Legal Adviser to National
Recovery Administration on the prison labor problem.

B. J. Gitchell, Special Adviser,
National Recovery Administration.

H. E. Wahrenbrock, Legal Adviser,
National Recovery Administration.

Peter Seitz, Legal Adviser,
National Recovery Administration.

Lester Kintzing, Industrial Advisory Board,
National Recovery Administration.

Mercer G. Johnston, Consumers Advisory Board,
National Recovery Administration.

Sol A. Rosenblatt, Division Administrator,
National Recovery Administration

David Ziskind, Labor Advisory Board,
National Recovery Administration.

V. COMMITTEE REPORT - NRA RELEASE NO. 9029 -A.

On November 26, 1934 the Ulman Committee submitted its report to the National Industrial Recovery Board on competition of products of the Cotton Garment Industry with products of prison labor as directed by Executive Order No. 118-135 of October 12, 1934. A copy of this report was mimeographed for public release on November 28, 1934. (*)

The arguments which Industry presented are broken down into three sections. First, that of The Cotton Garment Industry, which is briefly summed up by the following quotation:

"The testimony given by this group is important out of all proportion to its accuracy in detail. A state of mind, whether based on fact, fear, or fancy, is something that must be reckoned with. These manufacturers are determined that competing prison labor must go. They regard the Prison Labor Compact as a means of perpetuating it, of increasing rather than decreasing

(*) Appendix No. D -NRA Release No. 9029-A

the competition of prison made goods with those of their own manufacture. Right or wrong, they are prepared to fight on this issue to the bitter end. In this fight they are working hand in hand with labor, and they have the support of large sections of the distributing trade and the consuming public. Such women's organizations as the Federation of Women's Clubs, the Consumer's League and others have joined the manufacturers and labor in the dissemination of the thought that goods made in a prison are essentially wicked goods that must not enter into commerce."

"This group favors the State Use System of prison production." (*)

Second - The Twine and Cordage Industry:

"Although the prisons produce one-third of the binder-twine made in this country, this industry seems willing that prison industry in this line shall continue, provided that under the Prison Labor Compact there can be secured equality of competitive prices, and provided that each State shall confine its sales within its own borders. It relies upon the Hawes-Cooper Act and the Prison Labor Compact as means toward these ends, although it complains that a differential in favor of prison labor costs has been set up and that there has been a lack of cooperation with the industry in the fixing of prices of prison-made goods. It makes no charge of bad faith, but asserts vigorously that administration of the compact has been inefficient. "(**)

Third - Other Industries, particularly Furniture, School Desks, etc.:

"Witnesses appearing before us indicate no immediately pressing questions in these lines. Generally, they object to a labor cost differential favoring prisons and urge closer cooperation between Prison Labor Authority and the several trade Code Authorities. They favor the State Use System but admit that in some States where that system prevails certain industries have succeeded in curtailing the distribution of prison-made products to state, county, and municipal agencies of government." (***)

Then came the arguments of Prison Management which are summarized but covered in a general way by the last paragraph of the argument which is as follows:

(*) Appendix No. D, Page 5 - NRA Release No. 9029-A
(**) Appendix No. D, Page 5 - NRA Release No. 9029-A.
(***) Appendix No. D, Page 5 - NRA Release No. 9029-A.

"In short, while this group as a whole favors the State Use System in principle, it emphasizes the practical difficulties that stand in the way of its general adoption. Therefore, its members urge that the Prison Compact be upheld and that practice under it be perfected; but they are positive that this can be accomplished only if the NRA label for prison made goods is continued in its present form. In answer to the suggestion that this label differs only metaphysically from the ordinary NRA Blue Eagle Label of commerce and therefore operates as an instrument of deception to which the Federal Government ought not give its sanction, they reply that under the Compact the labor of men in prison must conform to the same standards of hours, compensation, and sound working conditions as are required for free workers. They tend to blink the obvious facts that compensation paid to a State by a prison contractor is not precisely the same thing as wages paid a worker for his and his family's support, and that many States operating prison factories on the State Account System justify the payment of merely nominal wages to their prisoners (often as low as 50 cents a month) on the ground that the State spends $1.00 or more per day to feed, house, clothe and guard each prisoner. And they ignore entirely the additional fact that goods made in prison and bearing a Blue Eagle label can by no stretch of the imagination be said to have been produced by labor invested with the right to collective bargaining."(*)

The arguments advanced by the witnesses for organized labor take a firm and uncompromising stand. They are as follows:

"(a) Competition in the open market between goods made in prison and free labor production must cease at once.

"(b) The Hawes-Cooper Act is sound policy and good law.

"(c) The Prison Labor Compact has no legal or moral right to an NRA Blue Eagle label. The present form of label works a deliberate fraud upon the public and is unfair to labor.

"(d) To them the foregoing principles are so fundamental and so irrefutable that one of the principle witnesses in this group refused to discuss, even by way of assumption for the purpose of argument, such questions as (1) whether the differential allowed in favor of prison labor is so great as to defeat fair competition under the compact or (2) what, if any, administrative changes may be desirable to bring about a better cooperation between the Prison Labor Authority and the several competing Code Authorities." (**)

(*) Appendix No. D. Page 8 - NRA Release No. 9029-A.
(**) Appendix No. D. Page 8 - NRA Release No. 9029-A.

The following summary of the testimony of the Staff Members of the Legal and other Divisions of the NRA is as follows:

"These witnesses were very helpful to us in clearing away numerous points of difference relating to the proceedings leading to the preparation and adoption of the Compact and the authorization of the NRA label under the Compact. Especially in regard to the latter, it had been charged by the Cotton Garment Industry not merely that the label is misleading and deceptive but that it was authorized without notice and put into use surreptitiously. These witnesses detailed to us the official steps taken in these procedures and also told of various preliminary conferences between representatives of the interested groups. The importance of this testimony is reflected in our Finding III, (infra).

"They insisted that the regulation of prison industry must be committed to its own Prison Labor Authority Administrator and that it would be unsound and impracticable to transfer this function to the several interested and competing Code Authorities and Administrators. But they conceded the desirability of developing a plan for the better co-ordination of these activities. They gave us convincing evidence of lack of co-operation and obstructive tactics on the part of the Cotton Garment Code Authority during the months that the Compact has been in existence." (*)

The testimony of Dr. Louis N. Robinson of Swarthmore College, Swarthmore, Pennsylvania, one of the foremost authorities on the subject of prison labor in the United States, is summarized as follows:--

"Professor Robinson was the only witness whose testimony may be described as entirely objective. In theory, he favors the State Use System above all others; but he pointed out that in practice this system not only has failed to reduce idleness in prison but in many instances has increased it. This he attributes to several factors, viz:-

"1. Most States that have adopted this plan passed imperfect laws. A State Use law, if it is to produce satisfactory results, must prescribe the compulsory purchase by State agencies, departments, institutions, counties, and municipalities of all classes of goods produced in the State's prisons that are required by such agencies, Massachusetts is pointed out as the State that has devised and adopted the best Statute.

"2. He questions the sincerity of some of the proponents of this system. For example, individual members of a certain organization of manufacturers which is conducting an "educational campaign" for State Use are known to have tried, in States where the system is already established, to restrict the purchase of prison made goods to institutions for the housing of prisoners.

(*) Appendix No. D - Page 9 - NRA Release No. 3039-A.

similarly, the representatives of given industries use political pressure and like means to secure the exemption of their particular industry from the operation of the law. For example, in the State of New York, though the prisons are equipped to build furniture of all kinds, not a stick of school furniture is permitted to be made by prison labor. Certain labor organizations have been active in similar attempts to restrict the effective operation of the State Use System, in spite of the fact that Labor gives the system its unqualified indorsement when it is discussed as an abstraction.

"3. If the State Use System is to become effective in reducing prison idleness, each State employing it must conduct a careful investigation by competent production engineers to determine the needs of the State and of its political subdivisions that can be supplied by the labor of prisoners. This must be followed by a thorough over-hauling of the State's setup of prison industry, always with an eye to the following requisites:

"a. The safe confinement of the prisoners.

"b. The provision for them of real, productive work on full time, as measured by free industry in like fields.

"c. The diversification of prison products to the greatest practicable degree, so that no one product will monopolize the market to the injury of outside industry and free labor.

"d. The selection, to as great a degree as possible, of industries for prison labor that tend to fit the prisoner to make an honest living after his release.

"Professor Robinson admits that this ideal has not been realized anywhere up to the present time. But he attributes this primarily to the factors outlined in subdivisions (1) and (2) above and not to any weakness inherent in the System." (*)

VI. TRANSCRIPT OF HEARING

The transcript of hearing on the investigation conducted by the Ulman Committee comprises a stenographic record of more than 1200 pages of exhibits and testimony. The several witnesses listed heretofore were heard and all other interested parties were afforded an opportunity to be heard. The record appears to be quite complete insofar as the recommendations and arguments presented by the Cotton Garment groups are concerned. However, as to the 50 remaining odd industries affected by prison competition, the writer is of the opinion that much more evidence could have been secured from both free industry and prison industries had time permitted.

(*) Appendix No. D - Pages 9 and 10 - NRA Release No. 9039-A.

VII. FINDINGS OF ULMAN COMMITTEE.

After an analysis of the testimony submitted at the hearing the Ulman Committee arrived at the following conclusions, which were:

"I. The Prison Labor Compact has not solved the problem of prision labor and will not solve it permanently and constructively.

"II. The Prison Labor Compact is an indispensable part of any larger plan for the real solution of the problem of prison labor. But it must be regarded as an interim measure.

"III. The Compact was the product of a genuine desire to solve a hard problem. It has been administered fairly by persons of the highest integrity. Any past errors in its administration have been only such as are inevitable in the development of a new instrumentality.

"IV. The only true solution of the prison labor problem is one that will effectually remove the products of prison labor from the ordinary channels of competitive trade and commerce. This means the State Use System.

"V. The present and potential competition of prison industry with the Cotton Garment Industry has created a special and acute problem that calls for immediate attention and relief." (*)

VIII. RECOMMENDATIONS OF THE ULMAN COMMITTEE.

After consideration the specific issues which were responsible for the Committee being called were:

"(a) The difficulties in the Cotton Garment Industry created by prison competition, and

"(b) The complaints against the operations of the Prison Labor Compact." (**)

The Committee made the following recommendations:

"1. The Committee recommends that the National Industrial Recovery Board use its good offices with the President to set up through the Public Works Administration a fund of $50,000,000 for the purpose of helping the states to meet the conditions specified in this report, so as completely to replan and reorganize their prison industries, removing prison-made goods from the open market and finally bringing to an end the prison labor controversy which

(*) Appendix No. D - Pages 10, 11 and 12 - NRA Release No. 9029-A.

(**) Appendix No. D - Page 13 - NRA Release No. 9029-A.

has burdened American industrial and political life for so long a time.

"2. The Committee recommends that in the interim between the present and the time when the reorganization of the prison industries can be effected by the use of the funds suggested above, the National Industrial Recovery Board use its good offices through the President and the Federal Emergency Relief Administration to effect the purchase from the prisons of prison-made garments, or to utilize the labor now employed on prison-made garments to make such other garments as the Federal Emergency Relief Administration may deem preferable. The purchase of these garments by the Federal Emergency Relief Administration from the state prisons should be scheduled on a declining scale, and should cease at the end of two years.

"3. In addition to the immediate adoption of the above program, the Committee further recommends that prison-made garments be barred in the public market by the withdrawal of the National Recovery Administration label now attached to them, or by its modification to read "prison made". The Committee suggests that a maximum of 15 days after the publication of this report be allowed to elapse before the above proposal for the taking over of prison-made garments by the Federal Emergency Relief Administration be effected.

"4. The Committee recommends that the Prison Labor Authority be continued, and that its offices be used as the agency in cooperation with which the above program is to be carried out, and that the loss in funds to the Prison Labor Authority which may result from the withdrawal of the label or its modification be supplied from the funds set aside by the Public Works Administration.

"5. The Committee recommends that an Executive Order empower the National Industrial Recovery Board to require an agreement between the Prison Labor Authority and the Code Authorities in the industries affected by prison-made products in every instance of change in price or costs of products sold by the prison industries. If such an agreement cannot be had by mutual consultation, an impartial chairman especially designated for that purpose should be named.

"6. The Committee recommends that, by cooperation between the National Industrial Recovery Board, the Prison Labor Authority, and the Code Authorities affected, a quota system be established for all prison industries, limiting their production for the open market at a point no greater than that which existed at the time the Prison Compact came into existence.

"7. The Committee recommends that if the above conditions be fully met then the remaining state, county, and city institutions now producing for the open market be brought under the Prison Compact." (*)

(*) Appendix No. D - Page 21 - NRA Release No. 9029-A.

A brief summary of the Committee Report with the major findings and recommendation listed is made a part of this report as Appendix "O". This was published in the form of a Public NRA Release No. 9029, November 29, 1934. This release is titled - "Replanning of Prison Industries in States to Remove Products From Open Market Recommended to National Industrial Recovery Board." (*)

IX. NRA PUBLIC RELEASE NO. 9078.

The National Industrial Recovery Board, on December 3, 1934, selected its Chairman, S. Clay Williams, Sidney Hillman, Member, and Linton M. Collins, Acting Division Administrator in charge of the Compact to contact the Federal Emergency Relief Administration in an effort to determine if that governmental agency could utilize prison labor garment production in the relief program, so that these garments might be removed from the open market. This was done in an endeavor to follow out Recommendation No. 2 of the Ulman Committee Report. (**) Several conferences were held by this Committee with representatives of the Federal Emergency Relief Administration, but at the time of the Schechter Decision by the Supreme Court no definite action had resulted and from the records available no purchases of prison goods were made by the Federal Emergency Relief Administration as part of the proposed program.

Because the National Industrial Recovery Board wished to obtain additional data and legal opinions on the proposal for a $50,000,000 P.W.A. program, it took no action on the proposal at its meeting of December 3rd, 1934.

The Board requested the Division Administrator in charge of the Compact to look into the possibilities of limiting all prison production by a quota system based on the output of prison factories at the time the Compact was put into effect. The Board also deferred action on the Ulman Committee recommendation that the N.R.A. label then used by prison plants under the Prison Compact be taken away or made to carry the words "Prison Made", pending further information and reports. (***)

X. DEFINITE ACTION OF NATIONAL INDUSTRIAL RECOVERY BOARD ON ULMAN COMMITTEE REPORT, DECEMBER 3, 1934.

Briefly the definite action by the National Industrial Recovery Board, December 3, 1934, may be stated as follows:

"1. The Legal Department of N.R.A. will give their views as to whether it is possible to enforce the quota system of prison production, although they feel unofficially that it cannot be done without the voluntary acceptance by the states.

"2. The F.E.R.A. will be interviewed to see if it will accept the cotton garments as recommended.

(*) Appendix No. E - NRA Release No. 9029.

(**) Appendix No. D - NRA Release No. 9029-A.

(***) Appendix No. F - NRA Release No. 9078.

"3. Division VIII of N.R.A. will gather statistics as to the manufacture and sale of prison products of all types during the last two or three years." (*)

XI. COMMENTS OF PRISON LABOR AUTHORITY ON ULMAN COMMITTEE REPORT.

At the joint meeting of the Association of States Signatory to the Compact and the Prison Labor Authority, on December 10 and 11, 1934, considerable discussion took place over the merits and demerits of the Ulman Committee Report. After a talk by Judge Ulman, Chairman of the Investigating Committee, the Association appointed a Committee to study the Ulman Report and offer suggestions, to the Association and the Prison Labor Authority so that they might be in a better position to prepare a response to the Ulman Report. The following is the report of the Committee to the Association which, in a general way, presents the reaction of the Prison groups to the Ulman Report:

"R

"REPORT OF COMMITTEE OF THE ASSOCIATION OF STATES SIGNATORY ON REPLY TO ULMAN REPORT.

"We, the undersigned, members of the Committee appointed by the Chairman of the Association of States Signatory, to consider the Ulman Report beg leave to submit the following:

"In the brief time at out disposal we were unable to do more than point out some of the obvious defects of the Ulman Report and to indicate very briefly what we think should be the reply of this group.

"The Prison side of this prison labor controversy seldom is presented to the public, and it would take too long to do it in this report. We would call attention, however, that even if one left out of account entirely all the financial benefits that accrue to the state, the prisoner, and his family from the successful employment of the prisoner, it must be remembered that there can be no successful rehabilitation program set up in the prisons which does not in large part rely on the employment of the prisoners.

"This argument cannot be met by a naive statement of the size of the state-use market. It is not the total size of this market that matters but the amount of this market that the prisons when confronted by the active and unceasing opposition of free manufacturers and free laborers can hope to win for themselves.

"There is a naive assumption running all through the Ulman Report that the adoption of the State-Use System means either the elimination of all competition between prison made goods and those produced by free labor or at least the reduction of this competition to a negligible amount. Actually the taking away from free manufacturers of their present market consisting of state and local official buyers would have practically the same effect on the price

(*) Prison Labor Minutes File, December 11, 1934. Meeting of Prison Labor Authority - Page 10.

structure as the presence in the open market of the quantity of prison made goods which these official buyers had been accustomed to buy from free manufacturers. The truth is that in practice only lip service is paid to the ideal of state-use, namely the giving up by the prisons of the open market in exchange for a closed market. It is a one-sided contract which the states make when they enact a state-use law. They promise not to sell in the open market but the free manufacturers and the free laborers make no promise not to invade this closed market set aside for the prison industries.

"Before the Federal Government or any of its agencies should try to force on the states the adoption of the state-use system, it should ask the code authorities of the industries affected to insert a clause in their respective codes forbidding their members to invade the state-use market. The time has come to demand a cessation in the pressure to adopt the state-use system until a way can be found to preserve the state-use market for the prison industries. Or if this plan is not feasible, Congress could act. It sought to prevent the appearance of prison goods on the open market, let it now finish the task by enacting if necessary a law which will keep the goods of free manufacturers out of the state-use market.

"It has been suggested by the Ulman Committee that the Federal Government in some way finance the setting up of industries in those states which will agree to go over to the state-use system. We suggest that such loans be made a claim on the prison industries themselves and not on the states. This will compel the opening up of the state-use market to prison industries since without this market, the prison industries would fail. It is best for the Federal Government to make its loans in this fashion, as only thus will it get a true picture of the forces at work to make idleness in the prisons not a temporary but a permanent condition.

"In our opinion, diversification will have more to do with the elimination of the prison problem, if by that we mean the employment of prisoners under fair conditions, and not simply the pleasing of certain specified free manufacturers and free labor groups, than will the adoption of a closed state-use system. We believe that the States should enter into a closer agreement on prison labor, and if they do not have the power to do this they should be given it by Congress. Following this, diversification should be a major policy of the Association of States Signatory and its decisions should be law.

"Our final suggestion, on which we would lay most stress, is that the National Industrial Recovery Board send a committee consisting of its own experts and of individuals primarily interested in providing work for prisoners as a part of a rehabilitation program to the individual states or to a specified group of states, not for the purpose of helping the states to meet the conditions specified in the Ulman Report, as is requested, but to determine for itself by consulting legal authorities of the respective states and by observing at first hand the working of the state laws and the functioning of the prison labor industries themselves the exact con-

ditions prevailing in the prisons of these states and for the further purpose of suggesting what these states should do in the light of a larger prison labor program. We believe that the situation is so different in some of the states from what it is in others that the uniform adoption of the state-use system would be little short of a calamity. If the funds can be had from the PWA, so much the better, but the point which we wish to emphasize is that the Ulman Report does not furnish sufficient facts for a decision by the NIRB in view of the obvious economic and political defferences of the individual states. A committee which started out on the assumption that all it had to do was to determine the extent of the state-use market in a given State and to plan the industries to supply this would find itself handicapped at the very start.

"In the meantime, the PLA should be continued and should operate much as it has done under government oversight and in full agreement with the codes of the industries affected.

"(Sgd.) Louis N. Robinson, Chairman

E. L. Parduc

H. M. Stewart

H. C. McMillan

C. F. McClintic."

With this background the Prison Labor Authority undertook to prepare a comprehensive report titled "Comments of the Prison Labor Authority on the Report of the Ulman Committee". This report was then presented to the National Industrial Recovery Board for their consideration. (*) A summary of the conclusions reached by the Prison Labor Authority are as follows:--

"A. State-use

"In order to promote diversification and to reduce the competition of prison-made products with the products of free industry sold on the open market, we recommend

"1. That the States Signatory to the Compact accept the aid of the Federal Government in setting up state-use industries;

"2. That any State having or adopting an adequate state-use law may be entitled to a share in such aid;

(*) Appendix No. G - Comments of the Prison Labor Authority On the Report of the Ulman Committee.

"3. That a state-use law to be "adequate" must include provisions that (a) all tax supported institutions or agencies must purchase from the prison industries such supplies as are made by these industries and used by such institutions or agencies unless granted a written release from such purchase by the Governor or other officer legally authorized to issue such releases; (b) public works and ways including highway construction, agricultural, horticulture, or mining activities constitute a proper state-use industry; (c) the SERA or other state agency supplying products for the relief of unemployables on relief rolls, or for prisoners' families shall be regarded as tax-supported institutions and agencies; and that (d) no statutory exemption from prison labor shall be granted to any industry.

"4 That an "adequate" state-use law may be either a law establishing a state-use system exclusive of other systems or a state-law concurrent with other systems as determined by the respective legislatures, so long as this law incorporates the essentials outlined under (3).

"B. State-use Prison Industries Corporation.

"In order to carry out the purposes set forth under Section A, we recommend

"1. That a Corporation known as the State-use Prison Industries Corporation be created by the President under Title I of the N.I.R.A. and that a fund of $1,000,000 be set aside to carry out its purposes;

"2. That the members of the PLA constitute the Board of Directors of this corporation with power to appoint a General Manager and such other personnel as may be necessary to effectuate the purposes of the Corporation;

"3. That grants to the states for the purposes of setting up and operating prison industries shall be made only upon the recommendation of this Corporation;

"4. That in granting such aid the Federal Government do so only on request from the properly constituted authorities and in anticipation of or subsequent to the adoption of an "adequate" state-use law in any state and after a careful study of the market for state-use and the necessary building, equipment, and personnel has been made by the Corporation in co-operation with the proper state officers in charge of the state prisons affected;

"5. That the Corporation on the recommendations submitted to it by its staff and approved by the state officers affected, shall recommend the grant of funds to be made to the State to build the necessary buildings, to purchase

and install the necessary equipment using prison labor as far as practicable, and to supervise and operate such industries as are established by these means for 5 years, the cost of such supervision and operation to be paid from the funds allocated and all expenses and receipts and any profits or losses accruing from such operation to be charged against such funds, and all buildings, and equipment, and any balance remaining in the fund at the end of that period to be the property of the State as provided in the grant;

"6. That the personnel to supervise and operate such industries shall be chosen in the manner and under the regulations governing the choice of personnel in the prison affected and subject at all times to the Warden, Superintendent or other authority in charge of the prison, but for a period of five years the Corporation shall have the right to inspect and make recommendations as to the proper conduct of such industries and to audit their accounts.

"C. Limitation on Open Market Sales.

"In such states as permit the sale of prison-made goods on the open market, we recommend

"1. That it be a condition precedent to the granting of Federal aid as set forth in Sections A and B, that an agreement be made, after consultation with the industrial code authority affected, between the Corporation and the properly constituted State authorities and those in charge of prison industries, which shall establish the limits beyond which such prison industries may not sell on the open market;

"2. That the FERA in anticipation of such limitation creating further idleness or even maintaining present conditions and in furtherance of a constructive penal administration, permit the cooperating prison administrations to introduce the following "work projects" for the free unemployed: medical, dental and nursing care; academic, vocational and avocational instruction; occupational therapy; case studies including the making of case histories, treatment programs, and psychological and psychiatric examinations and classifications of prisoners; welfare work among prisoners' families; recreation programs; and supervision of paroled convicts including preparation for release, such services to be supplied only upon the request of and to the extent asked for and under the rules and regulations prescribed by the State authorities.

D. Prison Labor Authority.

"With regard to the administration and enforcement of the

Prison Labor Authority, we recommend

"1. That the PLA be continued and that provided the signatory states agree all state-use products be brought under its jurisdiction and assessments made on them for the support of the PLA;

"2. That for such goods as are sold on the open market by states complying with the Compact and agreeing either voluntarily or by statute to a limitation on such sales, the Compact label be issued as at present;

"3. That the present price policy of the PLA as set forth in the minutes of the meeting of October 16, 1934, be continued with appeal to the NRA or to a permanent impartial arbiter appointed by the NIRB in case of dispute as provided in the Compact;

"4. That the PLA be given jurisdiction over industries in any penal institution, jail, or house of correction which agrees to comply with the Compact.

Respectfully submitted for

The Prison Labor Authority

THORSTEN SELLIN

JOHN J. HANNAN

STEPHEN B. HUNTER"

XII. PRISON LABOR AUTHORITY PROPOSAL TO EFFECTUATE RECOMMENDATIONS OF ULMAN COMMITTEE.

Prior to the Supreme Court decision of May 27, 1935, the Prison Labor Authority submitted a plan to the National Industrial Recovery Board. In the opinion of the Prison Executives of the States Signatory to the Compact, this plan if put into effect would have accomplished the objectives outlined in the recommendations of the Ulman Committee Report. Because of the nature of these recommendations and the extent to which the prison groups would willingly cooperate, the writer feels that this entire plan should be embodied in this report. The plan is quoted as follows:

"A Plan to Effectuate the Recommendations of
the Ulman Committee Re Prison Competition

"To effectuate the program outlined in the Report of the Ulman Committee and the Reply of the Prison Labor Authority thereto, as requested, the following is submitted for your consideration:

PURCHASE OF PRISON-MADE GARMENTS

"1. NRA issue an order with the approval of the President

declaring all cotton garments made in prisons and not sold to tax-supported institutions or agencies to be "surplus commodities", effective June 1st, 1935.

"2. FERA contract with the following prisons to purchase cotton garments or equivalent amounts not less than those specified below per year for two years at prices which shall be equal to the cost of production plus 5%. (Cost of production shall include cost of all materials; cost of civilian labor used for industrial supervision, instruction or administration, but not including the cost of custodial guards; cost of overhead items including heat, light, power, machine repairs, and other items of general manufacturing expense including insurance, supplies, and small tools and reserves for replacements of plan and equipment; cost of wages paid inmates directly employed in the production of said articles, and cost of maintenance of inmates so employed.) In no case, however, shall the prices paid exceed the fair prevailing wholesale market price for comparable garments.

Work Pants		Value	Quantity
Delaware	(hc)	$ 75,000	10,000 doz.
Indiana	(sr)	250,000	35,000 "
Kentucky	(sr)	250,000	35,000 "
Missouri	(sp)	500,000	75,000 "
Maryland	(sp)	500,000	75,000 "
Oklahoma	(sp)	500,000	75,000 "
Michigan	(sp)	200,000	30,000 "
W. Virginia	(sp)	200,000	30,000 "
		$2,475,000	365,000 "

Work Shirts		Value	Quantity
Florida	(sf)	$ 75,000	20,000 doz.
Tennessee	(sp)	250,000	75,000 "
Kentucky	(sp)	250,000	75,000 "
Missouri	(sp)	250,000	75,000 "
Maryland	(hc)	150,000	40,000 "
Michigan	(sr)	150,000	40,000 "
		$1,125,00	325,000 "
		2,475,000	365,000 "
Total		3,600,000	690,000 "

sp - State Prison sr - State Reformatory
hc - House of Correction sf - State Farm

"While these amounts are tentative, they are based on actual production figures for 1934 and represent a fair division of the existing business among the prisons.

"In order to provide labor for the inmates of the Alabama State Prison during this emergency, it is recommended that in making contracts with the States of Florida, Kentucky, Maryland, Michigan, Missouri, and Tennessee for the purchase of shirts (estimated at $1,125,000 annually), the FERA agree to furnish the chambray and purchase same from the Alabama prison at cost plus 5%.

This will provide approximately $500,000 worth of business to the Alabama prison.

"It should be noted that allowing for free labor employed in prison industries and the cost of materials and trimmings purchased from free plants, that half of the money paid the prisons for these products (or $1,750,000) will go to free industry.

"The above action would make unnecessary the withdrawal of the Compact Label sin ce it would no longer be used on cotton garments, the only prison product now requiring the label. Nevertheless the possession of the Compact Label by other prison industries is a valued insignia of cooperation and should be maintained.

DEVELOPMENT OF STATE-USE IN DUSTRIES IN STATE PRISONS AND LIMITATION OF OPEN MARKET SALES

"1. PLA request the assignment of personnel for 2 years beginning May 1, 1935, under the Public Works Bill (H.J. Res. 117) which provides $300,000,000 for assistance for educational professional, and clerical persons (a) to conduct surveys of the law affecting prison industries especially in States now selling prison products on the open market and to present necessary legislation to establish adequate state-use laws in such States; (b) to make surveys of the market for state-use products among the institutions and other tax-supported agencies of these States and their political subdivisions, to prepare a program of state-use industries for these States as a result of such surveys, and to present to the proper Federal authorities projects for the erection of buildings, purchase and installation of equipment and other necessary expenditures for plant and personnel to establish such state-use industries in the States co-operating; and (c) to study the problem of providing constructive activities for idle prisoners and to develop such activities.

"Following is a tentative list of personnel to carry out the work outlined herewith.

"(a) For survey and preparation of state legislation affecting prison industries

1 Attorney and 4 Field Agents
2 Assistants (Stenographic and clerical) (for 2 years)

"(b) For surveys of state-use markets and preparation of state-use projects

6 Industrial Engineers (1 Chief, 1 Assistant, 4 Field Supervisors)
1 Assistant (Stenographic and Clerical) (for 2 years)

144 Statisticians (1 Chief, 1 Assistant, 1 Clerk in each of 48 or more States)
(for 6 months)

"(c) For development of programs of constructive activities for idle prisoners

6 Directors of Rehabilitation (1 Chief, 1 Assistant, 4 Field Agents)
1 Assistant (Stenographic and Clerical)
(for 2 years)

255 Case-Workers, Teachers, Instructors, etc., for 75 State Prisons and Reformatories and 10 Jails having industrial programs. (Average of 3 to each institution.)
(for 18 months)

"Total personnel required----------420

Approximate total cost-----$1,110,000 ($485,000 first year
615,000 second year)

"By the spring of 1936, each of the groups of 3 in the 85 prisons, reformatories, and jails (see (c) above) will have developed a program which can employ an additional 1500 workers to promote constructive activities for the 75,000 idle prisoners who are n ow in these institutions. This assumes one worker for each group of 50 idle prisoners.

"2. States will then, in co-operation with the Prison Labor Authority, present to the President proposed projects for setting up these state-use industries under the provisions of Public Works Act (H.J. Res. 117) which allots $900,000,000 for loans or grants or both for projects of States, Territories, etc., under conditions as set forth in the Conclusions of the Comments of the PLA on the Report of the Ulman Committee (See PLA Conclusions, B - 3, 4, 5, 6).

"It is understood that funds as recommended by the Ulman Committee will be set aside to provide for such projects. (See Report of Ulman Committee, Recommendation No. 1.)

"It is understood that States receiving such aid must (1) adopt "adequate" state-use laws. (See PLA Conclusions A - 3 and 4); (2) agree, after consultation with the PLA and the Industrial Code Authority affected, to establish the limits beyond which prison industries in these States shall not sell on the open market. (See PLA Conclusions C - 1); and (3) make adequate provisions for taking care of idle prisoners. (See PLA Conclusions C - 2).

"Based on the estimates made by the Ulman Committee, if these projects are approved in the 30 or 40 States now manufacturing prison products, they should by the Spring of 1936 provide work for 1 year for approximately 7000 workmen making materials and equipment

and for 7,500 construction workmen. This assumes a total expenditure of $50,000,000 as proposed by the Ulman Committee for shops, equipment and materials for State-use industries divided as follows: $25,000,000 for equipment and materials representing the labor of 5,000 industrial workers for 1 year and $25,000,000 for construction of which $15,000,000 represents labor of 7,500 workmen for 1 year and $10,000,000 represents material or 2,000 industrial workers for 1 year.

"Altogether then this program can provide work for at least one year for approximately 2,000 "white collar" workers and 15,000 construction and industrial workers; and set in operation the means of reorganizing the prison program of America in line with the report of the Ulman Committee.

"3. To defray the expenses of maintaining the office of the PLA and to carry on the functions outlined in the Compact, the PLA will continue to make assessments on prison products sold on the open market. The PLA recommends that similar assessments be levied on all prison products sold for State-use in States Signatory including cotton garments sold to the FERA or SERA. A revised budget and program covering these items will be submitted to the NRA at the close of the PLA fiscal year April 30, 1935.

"If desired, the PLA will incorporate in order to insure a continuing supervision over the projects noted in (2) beyond the emergency period. A number of Code Authorities including Retail Trade, Cotton Garment, Construction, have incorporated."

Because of its nature and the possibilities involved, this plan, in the opinion of the writer, should be given careful consideration by both the prison and free industry groups and any Governmental Agency which may hereafter attempt to solve the problem of prison labor versus free labor in the production of commodities which can be manufactured within the penal institutions.

XIII. ACTION OF N.I.R.B., MAY 27, 1935, ACCEPTING IN PRINCIPLE PROGRAM TO REPLAN AND REORGANIZE PRISON INDUSTRIES

The morning of May 27, 1935, the National Industrial Recovery Board met with Messrs. Coonley, Code Administration Director, and Collins, Acting Division Administrator, Public Agencies Division, in charge of the Compact. At this meeting the Board discussed the question of the competition of the products of prison labor with the products of free industry. A statement was prepared, approved and later published for public release which is as follows:

"The National Industrial Recovery Board today adopted in principle, subject to the working out of details, the following statement in reference to the competition of prison-made products with the products of private industry:

"1. The desirability of utilizing approximately $50,000,000 of the relief fund to enable the states completely to

replan and reorganize their prison industries and prison welfare activities, remove prison-made goods from the open market through diversification for state use, and finally bring to an end the prison labor controversy which has so long burdened American industrial and political life. To this end it will at once suggest to the President,

(a) The desirability of establishing an agency, properly representative of the interests concerned, to coordinate and supervise this work.

(b) The desirability of at once placing the Division of Research and Planning of NRA in charge of the necessary survey. (The survey should be under way within a week.)

"2. The desirability (in the interim between the present and the time when the reorganization of the prison industries can be effected by the use of the fund suggested above) of having the Federal Emergency Relief Administration effect the purchase from the prisons of prison-made garments and other products, or arrange for the labor now employed on prison made garments to be utilized to make other garments for such purchase. The purchase of these garments by the Federal Emergency Relief Administration from the state prisons should be scheduled on a declining scale, and should cease at the end of two years.

"3. The desirability of establishing by cooperation between the National Industrial Recovery Board, the Prison Labor Authority, and the Code Authorities affected, a quota system for all prison industries.

"4. In the meantime, the question of an appropriate label for any goods going into the open market will be reexamined by the NRA."

CHAPTER VII

PRISON INDUSTRIES REORGANIZATION ADMINISTRATION

I. MEMORANDUM OF MAY 18, 1935, FROM ACTING DIVISION ADMINISTRATOR COLLINS TO L. C. MARSHALL URGING THAT DEFINITE ACTION BE TAKEN BY NATIONAL INDUSTRIAL RECOVERY BOARD TO FURTHER PRISON PROGRAM RECOMMENDED BY ULMAN COMMITTEE.

On May 18, 1935, Linton M. Collins, Acting Division Administrator, submitted to L. C. Marshall, Executive Secretary of the National Industrial Recovery Board, a memorandum urging the Board to take definite action on the Prison Program recommended by the Ulman Committee. The body of the memorandum is as follows:

> "It is evident that some definite action should be taken by the National Industrial Recovery Board to further the prison program recommended by the Ulman Committee. The Prison Labor Authority has appointed a committee to confer with the National Industrial Recovery Board. The representatives of the states are all anxious and eager for this program to be consummated at this time. We will secure their cooperation now, whereas an apathetic attitude is apt to result in a waning of their enthusiasm and cooperation.
>
> "There will be held in Chicago on the 23rd, a meeting of the representatives of the code authorities and industries affected by prison competition. There are now some fifty-seven industries in prisons. All of these groups have been invited to attend. Mr. Clarke and I will be present at this meeting. This group is very eager to work out some program.
>
> "The President has indicated his interest, but has expressed a doubt as to whether or not the program as recommended by the Ulman Committee would meet the "fundamental principles" which he must recognize in determining the eligibility of any projects. The Department of Justice has concurred in this. Mr. Sanford Bates, Director of the Bureau of Prisons dictated a plan whereby the Federal Government may assist the states to abolish unfair prison competition. This is solely a statement of policy which, if the President will sign and approve, will possibly, for these particular projects, be a substitution of the rules as to recognizing the necessary "fundamental principles". A copy of this is attached. It should have the approval of Mr. Richberg as Chairman.
>
> "It is necessary for the Board to take some kind of action and make its recommendations to the President immediately. If this could be done prior to the Chicago meeting on the 23rd and also prior to the hearing which the National Industrial Recovery Board will give the cotton garment group on Thursday, the 23rd, it will be most effective. Is there some way for you to work this out?" (*)

(*) Memorandum of May 18, 1935, Prison Labor Program File, Former Public Agencies Division, NRA.

The plan referred to as having been dictated by Mr. Sanford Bates, Director of the Bureau of Federal Prisons, is attached to this report as Appendix "H". (*)

The significant portion of the memorandum is that in which the Acting Division Administrator points out that representatives of the states were eager for the prison program to be consummated and that their cooperation could, at that time, be secured. It has previously been shown that the National Industrial Recovery Board did take action on May 27, 1935. (**)

II. REPORT OF ORGANIZATION MEETING CONFERENCE OF FREE INDUSTRIES ON ECONOMIC PLAN FOR PRISON MADE GOODS.

At a meeting in Chicago on May 23rd of industrial groups interested in solving the problems involved in prison labor, the following actions were taken:--

A. A permanent organization committee was selected and authorized to secure the active cooperation of all interested industries, if possible, and, pending final organization, to carry on the work in accord with the program adopted. The committee chosen was as follows: Henry J. Hanson, Chairman, Marking Devices Industry; Bon Geaslin, Attorney, Cordage Institute and Cotton Garment Industry; J. C. McCarthy, Furniture Mfg. Industry; G. H. Redding, Concrete Pipe Industry; Joseph C. Hodges, Advertising Metal Sign and Display Mfg. Industry. (***)

B. The following five principles were adopted and endorsed singly and as a complete platform:

"1. COOPERATION. Any permanent solution requires the the joint effort of free industry, prison officials, the Prison Labor Authority, and the Federal Gocernment to develop an industrial program for the prisons which shall be fair to the prisons, the prisoners, free industry and labor, and the taxpayer.

"2. DIVERSIFICATION AND LIMITATION. Prison competition with free labor and free industry should be limited so far as possible, with due regard to the reasonable employment of prisoners, by diversification of prison industries and limitation of the amount and kind of articles produced and/or processed, without undue encroachment upon any industry.

(*) Appendix No. H - A Plan Whereby the Federal Government May Assist the Several States to Abolish Unfair Competition In Prison Industries.

(**) Page

(***) Report, Conference of Free Industries on Economic Planning for Prison Made Products - Prison Labor Program File, Former Public Agencies Division, NRA.

"3. REGULATION. Prices and trade practices of prison industries, including state-use industries, should be brought under the jurisdiction of the Prison Labor Authority.

"4. REHABILITATION. The use of income from prison industries to develop educational, vocational and other constructive activities for otherwise idle prisoners should be a corrollary of any adequate prison industrial program.

"5. FEDERAL AID TO PRISON INDUSTRIES. With the aid of Federal funds the development of a prison industries program in accordance with the principles outlined above should proceed immediately." (*)

C. Since it was deemed desirable to institute immediate action and prepare the ground work of personal conference, at an early date, the following telegram was sent to President Roosevelt:

> "At a conference of representatives of free industries affected by prison competition, held at the Edgewater Beach Hotel today, it was voted to endorse the principle of Federal Aid to state prison industries as a basis for establishing an industrial program in the prisons of America which shall be fair to the prisons, free industry and the several states. We urge your approval of the proposal to allot funds to the states under the Emergency Relief Appropriation Act of 1935 to make surveys in the several states as a basis for such a program and to aid the states in establishing a diversified program of prison industries and a constructive program of activities for idle prisoners. We respectfully request that you appoint a joint committee representing free industry, the prisons, and the Federal Government to advise with the Emergency Relief Administration as to the conditions upon which such a program shall be established. We are prepared to send representatives to Washington to cooperate with the prisons and with the Federal Government in this program at your request."(**)

On May 27, 1935, Mr. J. R. Swift, Chairman of the Code Authority for the Marking Devices Industry, wrote the following letter to Mr. Donald Richberg, Acting Chairman of the National Industrial Recover Board.

(*) Report, Conference of Free Industries and Economic Planning for Prison Made Products - Prison Labor Program File, Former Public Agencies Division, NRA.

(**) Report, Conference of Free Industries on Economic Planning for Prison Made Products - Prison Labor Program File, Former Public Agencies Division, NRA.

"Supplementing my letter of May 3, 1935, you will be interested to know that a conference of free industries, interested in the proposed program of Federal Aid for prison industries, was held in Chicago, May 27, at which twenty-one representatives of twelve industries seriously affected by prison competition were present. As a result of the deliberations of this conference, a platform of principles was adopted and a message sent to the President. A copy of each is enclosed.

"An Organization Committee consisting of five representatives from the Fabricated Metals, Furniture, Cordage, Cotton Garment, Clay Products, and Marking Devices Industries was appointed to formulate a permanent Conference Committee. This Organization Committee has also delegated me to go to Washington immediately and confer with you and the other members of the N.I.R.B., as to the procedure to follow in being of any assistance we may, in forwarding the plans now under consideration.

"As I must be in New York on other matters the early part of the week, beginning May 27, I should like to make appointments to discuss these matters with you and any others you suggest, on Friday and Saturday, May 31 and June 1. Will you kindly advise me, in care of the Superior Type Company, 200 Fifth Avenue, New York, whether this meets your convenience?

"From the contacts which we have already had with Mr. Linton M. Collins, Division Administrator of N.R.A. Division Eight, and with the officers of the Prison Labor Authority, as well as with representatives of free industry, we were led to believe that there is general approval of the proposal that Federal Aid be extended to the states to reorganize prison industries from the funds available under the Emergency Relief Appropriation Act of 1935. We trust the President has given his approval to this general policy. We are, however, concerned about the conditions under which this money shall be alloted to the several states in order to insure the results desired. Several suggestions have been proposed, but the one which appeals most to the industries represented in the conference recently held in Chicago, I believe, is that an Advisory Committee representing free industry, the prisons, and the Federal Government shall be established to assist the Emergency Relief Administration in determining these conditions.

"As action on this matter seems both imminent and imperative (assuming that the President will approve the general policy of extending Federal Aid to state prisons), I should like to propose that such an Advisory Committee be established by the President, five members of whom

shall be selected by the Conference of Free Industries, five by the Association of States Signatory to the compact, and five from the several departments and Agencies of the Federal Government interested, and that this Committee meet in Washington not later than June 30, to formulate the general conditions under which this Aid shall be granted, and to cooperate with the Federal Government in this matter in any way possible.

"I offer this suggestion in the hope that it may at least serve as a focus for discussion in any conference which may be possible while I am in Washington at the end of the week." (*)

It is to be noted that Mr. Swift proposed (assuming that the President will approve the general policy of extending aid to state prisons) that an Advisory Committee be established by the President of whom five members shall be selected by the conference of Free Industries, five by the Association of States Signatory to the Compact, and five from the several departments and Agencies of the Federal Government interested.

Although invitations had been issued to interested industries, state prisons, Government and Labor Officials, to attend the Chicago "Organization Meeting Conferences of Free Industries on Economic Planning for Prison-Made Goods", several representatives of trades and of industries whose products compete with prison made products met in New York City, May 20, 1935, and took such action as is outlined in the following telegram:

"DONALD RICHBERG
CHAIRMAN NATL INST NAIL INDUSTRIAL CONFERENCE BOARD
WASHDC

AS CHAIRMAN OF INDUSTRIES CONFERENCE ON PRISON LABOR
ELECTED AT MEETING CITY CLUB NEWYORK MAY 20 ATTENDED
BY REPRESENTATIVES OF COTTON TEXTILE BROOM HOSIERY
UNDERWEAR CORDAGE TOYS FURNITURE COTTON GARMENT MANUFACTURERS
AND WHOLESALE AND RETAIL DRY GOODS MERCHANTS STRONGLY URGE
FOLLOWING PRINCIPLES AS BASIS FAVORABLE ACTION BY NIRB ON
PRISON LABOR STOP FIRST IMMEDIATE APPROVAL ULMAN REPORT
IN PRINCIPLE SECOND IMMEDIATE WITHDRAWAL BLUE EAGLE FROM
PRISON PRODUCTS THIRD RECOMMENDATION THAT APPROXIMATELY FIFTY
MILLION DOLLARS BE EARMARKED UNDER RELIEF PROGRAM TO PROVIDE
BUILDING AND EQUIPMENT FOR EXCLUSIVE STATE USE PRISON INDUSTRIES
WHEN PROJECTS SUBMITTED MEET RELIEF REQUIREMENTS SUPPLEMENTED BY
APPROVAL FROM NIRB CERTIFYING EACH PROJECT TO BE IN HARMONY WITH
GENERAL INDUSTRIAL RECOVERY PROGRAM AND ULMAN REPORT FOURTH THAT
REPRESENTATIVE ADVISORY COMMITTEE FROM INDUSTRY LABOR AND PRISON

(*) Letter of May 27, 1935 from Mr. J. R. Swift to Mr. Donald Richberg - Prison Labor Program File, Former Public Agencies Division, NRA.

GROUPS WORK WITH NIRB TO INSURE EXPENDITURES IN CONSTRUCTIVE MANNER STOP INDUSTRIES CONFERENCE HOLDS NEXT SCHEDULED MEETING JUNE 4 INVITING ALL INDUSTRIES NOT ALREADY REPRESENTED STOP OUR PROGRAM CONTEMPLATES FURTHER DEVELOPMENT OF AND ASSISTANCE TO SIMILARLY INTEGRATED STATE COMMITTEES ALSO COOPERATIVE ACTIVITIES WITH ORGANIZED LABOR AND CONSUMER GROUPS INTERESTED IN PRISON EMPLOYMENT PROBLEMS.
A F ALLISON CHAIRMAN 40 WORTH ST NEWYORK" (*)

III. MEMORANDUM OF ACTING DIVISION ADMINISTRATOR COLLINS TO L. C. MARSHALL, EXECUTIVE SECRETARY OF THE NATIONAL INDUSTRIAL RECOVERY BOARD, MAY 29, 1935, OUTLINING STEPS TO BE TAKEN IN CONNECTION WITH NATIONAL INDUSTRIAL RECOVERY BOARD ACTION IN PRISON LABOR FIELD.

After consultation with Mr. James Porter Davis, of the Division of Research and Planning, Acting Division Administrator Collins submitted a memorandum on May 29, 1935, to the Executive Secretary of the National Industrial Recovery Board outlining his opinion of the next steps to be taken in the prison labor field.

Mr. Collin's suggestions were as follows:

"1. That the Board submit to the President immediately the recommendations as adopted by it at the meeting on Monday, May 27 with the request that he immediately earmark fifty million dollars from the relief monies now available to carry out such a program.

"2. That the Board make a definite proposal as to the creation of an agency, at the earliest possible moment to initiate, coordinate and supervise a program of action, to effectuate so far as may be practicable, the recommendations of the Ulman Committee. There is attached a suggested draft of an executive order creating the Prison Industries Reorganization Administration which may be used if it conforms to the President's views. This order, following that creating the Rural Electrification Administration, provides for the appointment of an Administrator to head such agency.

"3. That the Board request the President to ask the Administrator of the Federal Emergency Relief Administration to proceed to make contracts with the Prison authorities in those states where cotton garments are now made, and that these contracts be entered into and work under them begun with all possible speed. This is particularly necessary now and if undertaken will preclude a grand rush on the part of some contractors to prisons which are now confronted with a great deal of idleness. It will remove from the open market those products which have the worst effect upon goods manufactured by free labor and sold in the competitive field. There is attached a schedule recommended by both industry, labor and prison authorities as to the amounts which will be satisfactory. It is my belief that this is a fair apprasal

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(*) Prison Labor Program File, Former Public Agencies Division, NRA

except for the state of Kentucky. The estimates there may be reduced. However, this is a matter to be worked out between the Federal Emergency Relief Administration and the respective states with the cooperation of the NRA and the proposed PIRA.

"4. That the facilities of the Research and Planning Division of the National Recovery Administration be utilized for the survey, such surveys to cover:

"(a) Surveys of the market for state use products among the institutions and other tax-supported agencies of these states and their political subdivisions and surveys which might prepare and recommend a program of state use industries for these states and to aid the respective states in presenting to the Prison Industries Reorganization Administration projects for erection of buildings, purchase and installation of equipment and other necessary expenditures for plants and personnel to establish state use industries in the states applying and cooperating.

"(b) A study of the problem of providing constructive activities for idle prisoners and methods of developing such activities.

"(c) Laws effecting prison industries especially in States now selling prison products on the open market and recommendations as to necessary legislative work for the establishment of adequate state use laws in such states, This survey will of necessity require legal research men, and probably should be separate from the other surveys.

"It is feasible that in this survey there can be utilized approximately four hundred white collar relief workers in addition to the staff of the Research and Planning Division. The latter agency will collate and coordinate all the surveys made.

"5. That contact be made with the prison officials through the Prison Labor Authority inviting the latter to cooperate with representatives of affected industries with the view of recommending programs of diversification and a quota system for all prison industries in accordance with the findings of the survey.

"6. That provision be made for the selection of representatives of:

a. Prison officials
b. Industry and Labor
c. Affected Federal Agency

to act in an advisory capacity to the Administrator of the agency established to administer the Prison Labor Program." (*)

(*) Memorandum of May 29, 1935, from Linton M. Collins to L. C. Marshall - Prison Labor File, Former Public Agencies Division, NRA.

V. PROPOSED EXECUTIVE ORDER ESTABLISHING PRISON INDUSTRIES REORGANIZATION ADMINISTRATION.

Accompanying Acting Division Administrator Collins' memorandum of May 29, 1935, to the Executive Secretary of the National Industrial Recovery Board was a proposed Executive Order prepared for the purpose of establishing the Prison Industries Reorganization Administration upon approval and signature by the President. The proposed Order is as follows:

"EXECUTIVE ORDER

ESTABLISHMENT OF THE PRISON INDUSTRIES REORGANIZATION ADMINISTRATION

"By virtue of and pursuant to the authority vested in me under the Emergency Relief Appropriation Act of 1935, approved April 8, 1935 (Public Resolution No. 11, 74th Congress), I hereby establish an agency within the Government to be known as the "Prison Industries Reorganization Administration", the head thereof to be known as the Administrator.

"I hereby prescribe the following duties and functions of the said Prison Industries Reorganization Administration to be exercised and performed by the Administrator thereof to be hereafter appointed:

> "To initiate, formulate, administer and supervise a program of approved projects with respect to replanning and reorganizing the existing prison industry system and prison welfare activities of the several states and the political subdivisions thereof, with the view of replacing such systems by adequate state use systems as rapidly as conditions may permit; thereby removing prison made products from the open market.

"In the performance of such duties and functions, expenditures are hereby authorized for necessary supplies and equipment; law books and books of reference, directories periodicals, newspapers and press clippings; travel expenditures, including the expense of attendance at meetings when specifically authorized by the Administrator; rental at the seat of Government and elsewhere; purchase, operation and maintenance of passenger-carrying vehicles; printing and binding; and incidental expenses; and I hereby authorize the Administrator to use the services of such agencies of the Federal government as may be necessary to carry out the purposes herein stated, to accept and utilize such voluntary and uncompensated services, and with the consent of the State, such State and local officers and employees, and appoint, without

regard to the provisions of the civil service laws, such officers and employees, as may be necessary, prescribe their duties and responsibilities and without regard to the Classification Act of 1923, as amended, fix their compensation: Provided, That in so far as practicable, the persons employed under the authority of this Executive Order shall be selected from those receiving relief.

"For the Administrative expenses of the Prison Industries Reorganization Administration there is hereby allocated to the Administration from the appropriation made by the Emergency Relief Appropriation Act of 1935 the sum of $100,000. Allocations will be made hereafter for authorized projects."

The White House,
June , 1933" (*)

This proposed Executive Order provided for one head of the Prison Industries Reorganization Administration to be known as "Administrator". According to the plan outlined in the memorandum of May 29, 1933, representatives of prison officials, Industry, Labor and any affected Federal Agency would act as advisors to the Administrator. This would have given all interested groups representation.

On June 15, 1933, the President by Executive Order No. 7075 terminated the National Industrial Recovery Board and reorganized the National Recovery Administration for the purpose of continuing the administration of the provisions of Title 1 of the National Industrial Recovery Act, as amended by Public Resolution 26 of the 74th Congress, and created the office of Administrator of the National Recovery Administration. This order appointed James L. O'Neill as Acting Administrator of the National Recovery Administration.

V. MEMORANDUM OF ACTING DIVISION ADMINISTRATOR COLLINS TO THE ACTING ADMINISTRATOR OF THE NATIONAL RECOVERY ADMINISTRATION URGING THAT HE PRESENT THE PRISON LABOR PROGRAM TO THE PRESIDENT.

Acting Division Administrator Linton M. Collins submitted the following memorandum to the Acting Administrator of the National Recovery Administration on June 20, 1933, in an effort to stimulate proposals to the President regarding the prison program.

(*) Prison Industries Reorganization Administration File, Former Public Agencies Division, N.R.A.

"1. Mr. O'Neill, Dr. Marshall and Mr. Coonley, or someone designated by them should present the Prison Program to the President and ascertain from him whether he wants this undertaken at this time, and is willing to have $50,000,000 of relief monies appropriated and segregated for the effectuating of such Prison Program. This follows up recommendations of the NIRB. Nothing further can be done until this step is taken and attitude of President made known. Monies are rapidly being allocated and a further delay will be fatal.

"2. Set up agency or designate authority to Public Agencies Division of NRA, for accomplishment of the Program.

"3. Contact Mr. Hopkins of FERA and have his agency make contracts with prison authorities for the manufacture of cotton garments for relief purposes in accordance with recommendations of Ulman Committee.

"4. Have Public Agencies Division with assistance of Mr. Davis of Research and Planning Division begin immediately to make the necessary surveys, if President gives assent." (*)

VI. CONFERENCE OF NRA EXECUTIVES ON PRISON LABOR QUESTIONS, JULY 1, 1935

On July 1, 1935, Messrs. L. C. Marshall, Director, Division of Review, Prentiss L. Coonley, Director , Division of Business Cooperation, Linton M. Collins, Acting Division Administrator in charge of prison matters, James P. Davis of the Division of Research and Planning and Burton E. Oppenheim, Deputy Administrator in the Textile Division, all of NRA, held a conference on the problem of prison labor competition. The following statements represent the concensus of opinion of those present according to a memorandum of July 1, 1935 from the Director of the Division of Business Cooperation to the Acting Administrator:

"1. It is highly desirable that some constructive program along the lines recommended by the Ulman Committee and approved in principle by the National Industrial Recovery Board on May 27, 1935, be inaugurated.

(*) Prison Labor Program File, Former Public Agencies Division, NRA Memorandum of June 20, 1935, From Linton M. Collins to James L. O'Neill.

"2. It appears that only the President and his advisers can decide as to whether this can and should be done with funds from the Work Relief Appropriation.

"3. If Federal funds are to be allocated for this purpose an independent agency should be set up to make surveys, develop and coordinate projects and supervise the expenditure of the funds provided.

"4. The definite ear-marking of a substantial sum such as the $50,000,000 proposed by the Ulman Committee is necessary to insure state cooperation.

"5. The supervisory agency should have the active cooperation of advisory committees representing industry, the prisons and the affected Government agencies.

"6. Since the Prison Labor Authority and industries affected by Prison Labor Competition have been pressing the NRA for advice, the Acting Administrator of the NRA should be requested to present the statements hereinabove noted to the President for final determination on the following basis:

"A. The President should be asked if he is favorable to the ear-marking of funds for the promotion of the "state use" system in prisons and the removal of prison products from open competitive markets. If he is not favorable, the matter can be dropped.

"B. If the President is favorable inclined toward this matter, he should be asked to obtain advice as to whether this can and should be done with funds from the Works Relief Appropriation. If the President determines, after proper advice, that the funds cannot be so used, the suggestion of the Ulman Committee must be abandoned.

"C. If such funds can be used, it is recommended that the President set up an independent agency to make surveys, develop and coordinate projects and supervise the expenditure of funds provided. Such agency should have the active cooperation of advisory committees representing industry, the prisons and the affected Government agencies." (*)

(*) Prison Industries Reorganization Administration File, Former Public Agencies Division, N.R.A.

VII. MEMORANDUM OF DIVISION ADMINISTRATOR COLLINS TO PRENTISS COONLEY, DIRECTOR, DIVISION OF BUSINESS COOPERATION.

On July 23, 1935, Acting Division Administrator Collins again attempted to expedite action on the Prison Labor Program by submitting a historical review of the Compact and its operations under the N.R.A. This review is in the form of a memorandum to Mr. Coonley. The memorandum further points out that steps should be taken to present the National Industrial Recovery Board's action of May 27, 1935, to the President and ascertain from him whether or not he desires that the proposed program be encouraged. If the President looked upon the program with favor it was necessary that an agency be set up to carry out the program. While this program was being instituted it was felt that relief for the Cotton Garment Industry could be obtained by the FERA, taking over cotton made prison garments for relief purposes so that the same would be removed from the public market as recommended by the Ulman Committee. (*)

VIII. EXECUTIVE ORDER 7194 ESTABLISHING PRISON INDUSTRIES REORGANIZATION ADMINISTRATION.

Mr. Prentiss Coonley, Director of the Division of Business Cooperation, conferred with the President concerning the prison program early in September 1935. Shortly following this conference, Executive Order No. 7194 was issued establishing an agency within the government to be known as the "Prison Industries Reorganization Administration". The order specifies that "the governing body of the Prison Industries Reorganization Administration shall be a Prison Industries Reorganization Board consisting of five members to be appointed by the President and to hold office at his pleasure." This Board is authorized to prescribe such rules and regulations and to delegate to its agents and representatives such powers, as, in its discretion, it shall deem necessary and proper for the performance of the duties and functions of the Prison Industries Reorganization Administration and for effectuating the purposes of the Order.

The duties and functions prescribed for the Prison Industries Reorganization Administration are set forth in the Executive Order itself. (*)

(*) Appendix No. 1 Memorandum of July 23, 1935 from Linton M. Collins, to Prentiss Coonley, Prison Industries Reorganization File, Former Public Agencies Division, N.R.A.

(**) Appendix No. J - Executive Order No. 7194

In addition to differences in minor details this Order differs essentially from the proposed Administrative Order recommended by the Acting Division Administrator in charge of the Prison Compact in that it provides for a governing Board of five members rather than an Administrator.

The establishment of the Prison Industries Reorganization Board by the approval of the President of Executive Order No. 7194 on September 26, 1935, terminated official action of the National Recovery Administration with respect to the prison labor problem. The Prison Industries Reorganization Administration was thereafter responsible for the carrying forward of the constructive attack on the problem originated by the National Recovery Administration.

CHAPTER VIII

ADMINISTRATION OF PRISON LABOR COMPACT

I. N.R.A. PERSONNEL.

From the time the National Recovery Administration received the proposed Code of Fair Competition for the Prison Industries to December 3, 1933, practically all prison matters presented to the N.R.A. were referred to Mr. John M. Keating, Assistant Counsel who was the N.R.A. official whom industry and prison representatives consulted and advised with in formulating the Compact.

After Mr. Keating resigned from the N.R.A. the Prison Labor problem was handled principally by Mr. Howard E. Wahrenbrock, Assistant Counsel, up to April 23, 1934. In a few cases Mr. Wahrenbrock was assisted by other members of the Legal Division during this time, but these assistants worked under his instructions and guidance.

On April 23, 1934, Mr. Linton M.Collins was appointed Deputy Administrator in charge of the Prison Compact, and Acting Division Administrator of Division Eight. Mr. Collins continued in this capacity until August 20, 1935, when he resigned from the National Recovery Administration. During the time he had charge of the administration of the Prison Compact he was assisted by the following: V. J. Clarke, Senior Assistant Deputy Administrator; Howard E. Wahrenbrock; Sydney R. Prince, Jr., Peter Seitz; William Wise and Spencer Pitts, Assistant Counsels and Legal Advisors; James Porter Davis, Research and Planning Advisor; Miss Rose Schneidermann and Sidney Hillman, Labor Advisors; Mercer G. Johnston and Stacey May, Consumer Advisors; Jonathan Chace,Dexter A. Tutein and C. L. Heyniger, Industrial Advisors.

II. PRISON LABOR AUTHORITY PERSONNEL.

In addition to the three Presidential Appointees and the duly elected members of the Prison Labor Authority (*) this Authority employed Mr. Howard B. Gill as Economic Advisor. Mr. Gill acted in the capacity of a managing agent for the Authority as well as Economic Advisor, and supervised the headquarters office in Washington, D. C. Prior to his appointment by the Prison Labor Authority to this position in May, 1934, he was Superintendent of the State Prison Colony at Norfolk, Massachusetts, for six years. (1928-1934). Before 1928 he held the following position with the United States Government.

1925 - Special Investigator of Prison Industries, United States Department of Commerce.

1926 - Purchasing Agent, United States Department of Justice.

1927 - Chief Investigator of Prison Studies, United States Bureau Department of Efficiency.

(*) Chapter III, Section III, Election of Formal Prison Labor Authority, ante.

With this back-ground it was recognized that the Authority left the actual management of its affairs, subject to their approval, in the hands of a man who had considerable experience from the standpoint of managing prison industries, investigating penal institutions and purchasing for such institutions.

III. EFFORTS OF N.R.A. OFFICIALS TO COORDINATE OBJECTIVES OF THE COMPACT WITH PRISON LABOR AUTHORITY AND AFFECTED CODE AUTHORITIES.

The major problem N.R.A. officials encountered in seeking to obtain compliance of the terms of the Prison Compact was that of reaching satisfactory voluntary agreements between prison manufacturers and free industry manufacturers with respect to establishing charges for labor and overhead in an effort to arrive at prices for which prison goods could be sold and conform to the provisions of Article V of the Compact. The provisions of this Article are as follows:

"ARTICLE V"

"Section A. -- Prison products, when sold by the prison or through a contractor, whether sold direct or through any agency, shall be sold not lower than the fair current price prevailing in the market in which the product is customarily sold -- to wholesalers, retailers, or consumers as the case may be."

"Section B. -- No penal or correctional institution or agency thereof shall enter into any contract for the labor of prisoners which does not insure a return from the contractor to the state or its political subdivision and/or the prisoner of an amount equal in value to the cost per unit of product for labor and overhead necessarily paid in competing domestic private industry on the comparable product: Provided, that the imposition or collection of such amounts or charges shall not be such as will reqire the sale of prison products at a higher price than specified in Section A hereof."

In order to determine what these prices should be it became necessary for the Prison Labor Authority and Representatives of the various Code Authorities affected by prison competition to meet and review their costs in an effort to arrive at some favorable decision. In most cases where this was done the results were beneficial to both groups and fair prevailing prices for the prison products were agreed upon. However, the difficulty would arise when labor rates and the cost of raw materials would change in a given area. These changes would materially effect the prices at which the goods would be sold to wholesalers, jobbers, retailers or whomever the purchaser might be, and because of these changes, especially if the prices were lowered, other competitors in the market would rush in and complaon about the unfair practices that were carried on by the prisons and how these prices were demoralizing their respective markets. Especially was this true in the case of the Cotton Garment and Binder Twine Manufacturing Industries. Nevertheless the Prison Labor Authority was continually attempting to hold its prison manufacturers in line and in most cases were successful until some free industry manufacturer would cut his prices. Then the Prison Labor Authority would authorize their institutions to meet such prices. This, of course, resulted in continual

complaint and dissatisfaction on the part of both groups. However, as the Cotton Garment Manufacturing Code and many others contained no price fixing provisions, the only way to adjust these differences was through conferences with the affected Code Authorities as provided for in Article VII, Section 2 (d) of the Compact which is as follows:

> "To determine, after conferring with the Code Authority of the Industry affected and upon request of any person or firm affected, the prices, charges and amounts provided for in Article V, Section A and B hereof; such determination to be subject to appeal to the President of the United States. In establishing fair current prices, charges and amounts, the Prison Labor Authority shall take into consideration all factors necessary to insure the marketing of prison products on a fair competitive basis. It may consider, among other factors, the extent to which monopolistic practices exist in any trade or industry in which the prison industry operates, the degree to which prison products may be discriminated against, the ability of the prison industry to adjust its operations and production to meet changing styles, designs, and/or other conditions beyond its control, and any restrictions placed upon the marketing of prison products. The fair current price may not be such as will effectually prevent the sale of prison products or destroy existing markets, nor shall it permit the sale of prison products at such prices or in such manner or in such quantities as will depress the standards, wages or working conditions of the competing private industry or defeat the purpose sought to be obtained through adherence by a competing private industry to a code of fair competition under the National Industrial Recovery Act." (*)

Continual effort was made by the N.R.A. Officials charged with supervision of the administration of the Compact, to see that fair decisions with respect to the various questions presented were arrived at wherever possible. As an example of this effort to assist those interested in arriving at such decisions the following taken from the minutes of the Prison Labor Authority Meeting of October 16, 1934, indicates the attitude of the Deputy in charge on problems which require fair and honest administrative judgment.

> "Mr. Collins discussed the price policy adopted by the Prison Labor Authority and expressed his approval of it providing the Prison Labor Authority was willing to change its authorization of minimum prevailing prices whenever it was shown that competing firms whose prices were used as a basis for determining such minimum prices, were not complying with code provisions."

The price policy referred to in this statement is quoted in Chapter III, Section VI of this report.

The Prison Labor Authority was unable to accomplish a great deal with respect to encouraging the various states signatory to the Compact in diversifying their prison industries. Although the Compact gave the Authority the power under Article VII, Section 2-(f)-1 to -

> "formulate such regulations as may be consistent with statutory

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(*) This report does not attempt to discuss the legality of such conferences.

Provisions and as may be necessary to assure a diversification of the output of prison industries in fair proportion to the production of the industries affected."

Undoubtedly the action of the Prison Labor Authority in establishing by agreement minimum charges for prison made products resulted in some curtailment of the sale of such goods on the open market. However such statistical information as was collected by the National Recovery Administration by means of a questionnaire (*) sent out early in 1934, is inadequate for the purpose of drawing conclusions as to the extent of curtailment.

Many complaints which were filed with the N.R.A. against prison competition were of a general nature in that the complainant would write or wire in objections to the activities of some particular prison with respect to the manner in which said prison was disposing of its goods, alleging the goods was going onto the public market at prices unfair to free industry. However, in many instances when the complaint was traced down it would develop that some other free industry competitor had lowered his price on the given commodity and as a result the prisons were forced to meet this lowered price in order to dispose of their products. This happened many times when the code which both free industry competitors were operating under did not contain price fixing provisions and both were living up to their codes in other respects. This method of meeting competition was looked upon as unfair. However, when free industry could not control its own members through the Code Authorities, it was felt that the prison people could hardly be expected to restrain their members with respect to such sales. This was especially true in the Cotton Garment Trade.

In the State of Minnesota where the state prison manufactures farm machinery for sale to the public, many complaints were filed with the N.R.A. regarding the prices at which these products were being placed on the open market in that State. Upon investigation it was found that the legislature of the State of Minnesota, in 1933, passed a statute which provided that the maximum price of machinery made in the State Penitentiary for the calendar years 1933, and 1934 should not exceed 80% of the average price charged in 1932. (**)For 1932 the maximum price was set by statute in the 1931 State Legislature. This statute in substance is as follows:

"That for the calendar years of 1931 and 1932 the maximum price charged to wholesalers, retailers and selling agents within the State of Minnesota for agricultural machinery of all kinds manufactured in the state prison should not exceed 85% of the average price charged for similar items of such machinery sold in similar quantities to such wholesalers, retailers or selling agents during the year 1930." (***)

As the Minnesota State Prison was the only prison engaged in the manufacture of farm machinery subject to the Compact, this problem was

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(*) See Page 153 of This Report.

(**) Chapter 343, 1933 Session Laws- Minnesota.

(***) Chapter 340, 1931 Session Laws - Minnesota.

confined solely to that State. However, such legislation did have a demoralizing effect upon the Farm Equipment Manufacturing Industry, but as these sales were controlled by a state statute, it was a matter beyond the control of the National Recovery Administration.

After Linton M. Collins was appointed Deputy Administrator in charge of the Prison Compact all prison matters with respect to provisions of Codes of Fair Competition were to be handled through his office either by himself or his assistants. In the main a goodspirit of cooperation existed between other Deputies in charge of industrial and agricultural codes and Division Eight. A few times those in charge of industrial codes would look with favor upon some proposed provision which would have resulted in hardship to the Prison Industry effected, but these generally failed for want of formal approval. On June 5, 1934, Order No. 303-5 titled "Code of Fair Competition for the Cordage and Twine Industry approval of Application for Exemption of the Binder Twine Manufacturers from Schedule B" was issued. This Order was actually an exemption from Schedule B of the Binder Twine and Cordage Code and granted permission to manufacturers of binder twine to dispose of their twine at prices other than those stated in their price list, provided that detailed information concerning all such sales be reported immediately to the Code Authority. The stay was to be effective until August 28, 1934. This was one order which went into effect some time before the prison people had any knowledge of its approval and resulted in permitting the free industry binder twine manufacturers to lower their prices and sell their twine before the Prison Labor Authority knew anything about the authorized change in price policy. This was one of the few times when administrative action was taken which seriously affected the prison industries without the Deputy in charge of Prison Industries being informed. Usually when objections were filed by the Prison Labor Authority, an opportunity would be given the prison people to enter their objections formally after the issuance of a temporary stay so that opportunity would be given everyone interested to be heard.

IV. LEGAL ASPECTS OF THE COMPACT.

During the formulative period of the Prison Compact in the fall of 1933, those who assisted in drafting the Compact provisions, as well as those who signed it as officials of their respective states did not formally consider the legal aspects of such a working agreement. The purely legal phases of the instrument were never given very serious consideration as it was recognized each institution was regulated by the statutes of its respective state and the Compact was entered into voluntarily with the spirit of cooperation in an endeavor to assist in effectuating the policies of Title I of the National Industrial Recovery Act.

In a file copy of a letter of September 4, 1934, to Professor Burke Shartel, of the Michigan Law Review, from James V. Bennett, Assistant Director, Federal Bureau of Prisons and Secretary-Treasurer of the Prison Labor Authority, are two paragraphs which briefly state Mr. Bennett's understanding of the legal aspects of the Prison Compact.

> "You understand, I presume, that the Prison Compact, so far, is merely a voluntary arrangement between the states and has no

legal status other than that derived from the National Recovery Act. I think that practically everyone realizes that the Federal Government has but little authoritative jurisdiction over the states in this matter, but it can and does help us to enforce the provisions of the Compact by invoking powers vested in it over other industries.

"Our Compact is implemented by the clause in the Retail Code which prohibits the sale on the open market of prison-made goods not made under its terms. In other words, if the State of Michigan should be declared a violator of our Compact, the Retail Code Authority would immediately forbid any of their members from selling the products of the State of Michigan. There are also other clauses in certain of the other Codes which help us to enforce our Compact. It is, however, admitted that with regard to certain products, the Compact cannot legally be enforced under present conditions. To cite an example; Minnesota manufactures a large amount of binder twine which it sells directly to the farmers or through farmers' unions and cooperators. If Minnesota should violate our Compact it is very doubtful that we could prevent the sale of its products because no N.R.A. Code applies to these agencies." (*)

In response to an inquiry of Acting Division Administrator, Linton M. Collins, relative to the legal validity of the Prison Labor Compact, to Assistant Counsel Peter Seitz, a memorandum was submitted which in substance is as follows:

"This memorandum is not intended to be a thorough nor exhaustive legal analysis of the validity of the Prison Labor Compact. It merely represents a precis of several legal arguments which come to mind on the subject. A definitive legal opinion would require a thorough study of the following aspects of the problem."

"1. The nature of state compacts.

"2. Whether Congress may delegate authority to consent to state compacts expressly granted in Article I, Section 10 of the Constitution to the Executive Branch of the Government.

"3. Whether the National Industrial Recovery Act contains such delegation of authority.

"4. Whether a state compact is an "agreement" under Section 4(a) of the National Industrial Recovery Act.

"5. If so, whether a compact is such an agreement, if it fails to contain the mandatory provisions of Section 7(a) of the National Industrial Recovery Act.

"6. Whether a state compact signed by governors wardens of state prisons, commissioners of correction, etc., on behalf of the signatory states, without supporting state

(*) Prison Labor General File "B", August to December, 1934.

legislation adopting or approving the compact or making its provisions the law of the state is duly signed by the state and enforcible against it."

"A. State compacts require the consent of Congress.

Article I, Section 10, Clause 3 of the Federal Constitution reads in part as follows:

> "No State shall, without the Consent of Congress,*** enter into any Agreement or Compact with another State, or, with a foreign Power***"

"B. It is doubtful whether Congress may delegate its power to give such consent.

There is a well recognized body of law to the effect that Congress may delegate to the Executive Branch of the Government its power to make rules and regulations even when the use of such power involves exercise of considerable degree of discretion. It is doubtful, however, whether a delegation can be made under a clause of the Constitution which specifically requires the consent of Congress. Delegation has usually been effected under broad and general clauses, such as the Commerce clause."

"C. The National Industrial Recovery Act does not contain any Delegation of Congressional power to consent to Compacts to the Executive and the Compact is not an Agreement within the meaning of the National Industrial Recovery Act.

Assuming (without conceding) that a delegation of authority to approve State Compacts may be made by Congress to the President, in this instance it must be made by the National Industrial Recovery Act, which is cited in the President's Order of Approval of the said Compact, approved April 19, 1934, Section 4-a of Title I of the NIRA provides that:

> "The President is authorized to *** approve voluntary agreements between and among, persons engaged in a trade or industry, labor organizations, and trade or industrial organizations, associations, or groups relating to any trade or industry, ****".

Let us assume further that the States engaged in Prison industries are persons or groups within that meaning of Section 4-a; but is the Compact an agreement within that Section? Section 7-a reads as follows:

> "Every Code of Fair Competition, agreement and license approved, prescribed or issued under this title shall contain the following conditions: (1) That employees shall have the right to organize and bargain collectively ***** etc.".

Obviously a compact relating to the regulation of Prison industries cannot contain the provisions set forth in Section 3-a, required in all agreements which may be approved under Title I of the Act. In my opinion this Section must be read in connection with and is a limitation upon Section 4-a. In other words the agreements, which the President may approve under Section 4-a, are those which contain provisions set out in Section 7-a. The present compact contains no such provisions. The conclusion must follow that the NIRA cannot be relied upon as a basis for the authority of the President (delegated by Congress) to approve the Compact."

"D. <u>The Prison Labor Compact may not have been properly executed.</u>

The signatures of the several States affixed to the Compact were subscribed by Governors, Wardens of State Prisons and State Commissioners of Correction. In only one instance (Kentucky) was there State Legislation in support of the Compact. No definite rules are set forth in the Federal or State Constitutions as to the procedure to be followed in subscribing the signature of a State to a Compact. However, it is considered to be the better rule to require State legislation adopting the act of its agents in signing the Compact and providing that the provisions of the Compact are the laws of the State."

"A further inquiry is being made into this subject and I will report to you as soon as it is completed." (*)

(*) Prison Labor General File "B"; August to December, 1934, Memorandum Dated December 1, 1934.

From this memorandum it is evident that the Compact lacks validity for reasons of the points raised and answers contained therein. Attached to this report is Appendix K and supplement (*) which are two memoranda of December 4, 1934, and December 7, 1934, respectively from Assistant Counsel Peter Seitz, to Associate Counsel, Jack Garrett Scott. These memoranda quite clearly establish the Assistant Counsel's views on the legal questions involved. After study and analysis it is apparent to the reader that the Prison Compact was merely a voluntary working arrangement by the States Signatory thereto and the National Recovery Administration, to carry out the objectives of the National Industrial Recovery Act so far as was possible under existing circumstances. On May 14, 1935, Mr. Israel Packel, Assistant Counsel, Legal Research, N.R.A., submitted a memorandum on the Federal Regulations of Prison Labor Products. (**) This memorandum deals with various phrases of the prison labor problem. The following question was prepared and conclusions were reached:

> "Question: To what extent may the Administration regulate the use of prison labor or its products and to what extent can immunity from such regulation be claimed by the State or its contractors as governmental agencies?"
>
> "Conclusions: 1. The interstate movement of prison made goods may be regulated by way of pertinent code provisions.
>
> 2. The production of state prison goods and their consumption by the state itself may not be regulated.
>
> 3. The production of state prison goods even though they are eventually sold in the state is a governmental function, immune from regulation.
>
> 4. The sale of prison made goods by the State is so incidental to the production that it also is probably a governmental function.
>
> 5. Contractors who deal with the State may be regulated so long as the regulations do not discriminate, interfere with or impair the right of the state to sell the goods."

These were transmitted to Mr. Jack G. Scott, Associate Counsel, N.R.A. by Mr. H. E. Wahrenbrock, Assistant Counsel, N.R.A. May 22, 1935.

(*) Appendix No. K and Supplement.

(**) Prison Labor, Legal Division Files, N.R.A. Legal Research No. 864.

V. INTERPRETATIONS.

On July 20, 1934, the Interpretation Committee of the Cotton Garment Code Authority issued the following ruling ruling:

> "When a manufacturer employs convict labor in the production of cotton garments and also employs free help, such as office employees, foreman superintendents, shipping clerks, etc., in connection with production of said garments, these latter employees and this manufacturer, insofar as prison production of cotton garments is concerned, is subject to the jurisdiction of the Cotton Garment Code. However, such a manufacturer is not entitled to the Cotton Garment Code Authority Label for such garment."

This interpretation was submitted to the N.R.A. and in a letter dated August 6, 1934, the Cotton Garment Code Authority was advised of approval as follows:

> "This ruling in question 76, page 3 of the Minutes of the Interpretation Committee of July 20, is hereby approved."

On October 16, 1934, the Prison Labor Authority voted the following resolution:

> "All goods produced, in whole or in part, in the prisons as defined in Article I of the Compact come under the sole jurisdiction of the Prison Labor Authority, hence the prison contractors insofar as they produce or distribute such products are under the sole jurisdiction of the Prison Labor Authority."

The Prison Labor Authority contended that under the provisions of Article I of the Compact they should have sole jurisdiction of this class of employees because the Compact specifically states in that Article in the last sentence which defines the word product that "'product' shall mean all goods, wares, merchandise and minerals manufactured, produced or mined, in whole or in part by prison industry for other than State Use."

After receipt of the above resolution by Division Eight, the matter was referred to the Legal Division for action. Pending a decision briefs were filed with the N.R.A. from both the Prison Labor Authority and the Cotton Garment Code Authority each supporting the contention that they should have jurisdiction over such employees in question. However, on December 28, 1934, Mr. Clarence I. Blau, Assistant Counsel submitted a memorandum to Mr. James C. Worthy, acting Assistant Deputy Administrator of the Apparel Section of N.R.A., which states as follows:

"I have your memorandum of December 26, 1934. Clearly, Mr. Clarke is correct. If the Prison Labor Authority has jurisdiction over the products, it is difficult to see how the Cotton Garment Code Authority can have jurisdiction of part of the working conditions.

"I have discussed this letter with the Assistant Counsel assigned to the Prison Labor Compact. He feels that it may be possible to work out some agreement by which the Prison authorities will see that free labor employed under the conditions described in adequate compensated. He, however, feels that this matter must be handled through the Prison Labor Authority and not through the Cotton Garment Code Authority in view of the rather delicate relationship between the Cotton Garment people and the Prison Labor people." (*)

Thereafter, it was considered that free labor employed by contractors operating in state prisons were subject to the jurisdiction of the Prison Labor Authority insofar as working conditions were concerned rather than the Cotton Garment Code Authority. However, there appears to be no reason why employees of free labor working in a state prison for contractors should not have complied with the wage, hour and general labor provisions of the corresponding free industry codes as to such labor. (**)

Another interpretation was proposed by the Cotton Garment Code Authority which would in effect place all prison contractors under the Cotton Garment Code Authority. An opinion on this proposal was given on April 11, 1935, by Mr. Clarence I. Blau, Assistant Counsel, N. R.A., as follows:

"I do not think that the interpretation requested is legitimate. Nor do I think that the result desired can be legally achieved through amending the Code. I do not think that we can indirectly control the activities of a sovereign state in the conduct of its penal institutions by making one who contracts with such state a member of a competing free industry. It would seem that if we can regulate by Code procedure the relationship between one who contracts with the prison and the prison, we can indirectly regulate the affairs of the sovereign state in derogation of its constitionally reserve powers.

"If I am wrong in this, I think it is certainly clear that a different type of an amendment should be proposed than the one suggested by the Cotton Garment Industry. This amendment obviously conflicts with other parts of the Code structure. For example, the Code apparently prohibits cutting by a contractor. The definition of "manufacturer" at the present time is so worked as to take account of that prohibition. If the

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(*) Prison Labor Interpretation File.

(**) Letter dated June 10, 1935, from V. J. Clarke, to J. V. Bennett, Prison Labor Interpretation File.

amendment were approved that would no longer be the case. Further, those who enter into contracts with prisons would, if this amendment were approved and interpreted in the way in which the Cotton Garment Code Authority desires, be compelled to place Cotton Garment Code Authority labels on their merchandise. That would certainly be in conflict with the desires of the Code Authority, if one can assume that they have not completely reversed anything that they have stood for for the last year or so. (*)

This question was raised by Mr. Raymond Walsh, Counsel for the Cotton Garment Code Authority in a letter to D. G. Edwards, Division Administrator, Textile Division, N.R.A., of August 23, 1934. Likewise, on September 10, 1934, the Prison Labor Authority joined in a similar request of the N.R.A. on the same question and submitted reasons why they felt that such contractors should be under the jurisdiction of the Prison Labor Authority. (**)

VI. STAYS

In addition to the stay of Administrative Order No. V-2 referred to previously in this report (Chapter IV, Section VI), the Cotton Garment Code Authority acquired approval on October 16, 1934, of an Order proposing to amend the Cotton Garment Code by including the following as a fair trade practice provision of that Code:

"Section 21. Shipment of Prison Made Goods. No member of the industry shall ship any merchandise or goods manufactured by prison labor into any State where the sale of said goods is prohibited or restricted by State law, and in the event that State laws shall require other conditions such as branding, then the same member of the industry shall conform with all of the local requirements of the particular state."

The Order of Approval contained a ten day stay affording an opportunity for interested persons to file objections. Pending this ten day period the Prison Labor Authority filed a formal protest against the inclusion of such a provision in the Cotton Garment Code. The protest was based on the following:

1. The Prison Labor Authority had not been consulted in regard to proposed provision although it pertained to prison made goods.

2. The enforcement of the provisions would result in discriminatory action against a few prison factories.

3. Such a clause would place in the hands of the Cotton Garment Code Authority the police power which rightfully belong to the states themselves, without giving them the responsibility for enforcing the law uniformly in all industries.

(*) Prison Labor Interpretation File.
(**) Prison Labor Interpretation File.

In a memorandum of August 25, 1934, from Mr. Horward E. Wahrenbrook, to Linton M. Collins, the following is stated with reference to the above order of October 16, 1934.

> "In my opinion the provision is illegal, it is not in accord with N.R.A. policy and should, in no event, irrespective of questions of legality and policy, become effective without an opportunity for the prison Industries affected to be heard."

The result was the Order was never put into effect. (*)

VII. PRISON INDUSTRIES STATISTICS AS COMPILED BY N.R.A.

During January and February, 1935, the Public Agencies Division of the N.R.A., pursuant to a request of the National Industrial Recovery Board initiated a set of prison industry questionnaires which was sent out to all of the states in an effort to obtain adequate information relative to various phases of prison production, employment, and the sale of prison products by the respective states. This was done with the objective of establishing a quota-system for all prison industries limiting their production for the open market at a point no greater than that which existed at the time the Compact came into existence.

The Public Agencies Division obtained some information from 31 states and the District of Columbia upon the return of these questionnaires. However, as the Administration did not, from the questionnaires, obtain complete information regarding each state institution, even in these states, no general conclusions can be drawn from the information in comparison with that published by the United State Department of Labor in Bulletin No. 595 of 1932.

VIII. PRODUCTS RECEIVED BY THE N.R.A. AGAINST THE USE OF PRISON LABOR ON PRODUCTS TO BE SOLD IN THE OPEN MARKET.

In addition to the protests referred to previously in this report relative to the use of convict labor in the manufacturing of cotton garments, binder twine, farm machinery, etc., by their respective Code Authorities, the following entered similar protests at various times with the N.R.A.: "Union-Made Garment Manufacturers Association of America, National Association for Men's Shirts and Boy's Blouse Contractors, Southern Garment Manufacturers Association, National Work Shirt Association, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating Industry, Central Trades and Labor Union of St. Louis, the Spaide Shirt Company, The Marking Device Industry, etc."(**) Besides these there are minor protests from individual members of industry, all of which are matters of record in the Prison Labor Files.

(*) Prison Labor General File - August to December, 1934.

(**) Prison Labor Files, Protests -- Complaints.

IX. COOPERATION BY OTHER GOVERNMENTAL DEPARTMENTS AND NATIONAL ASSOCIATIONS WITH N.R.A. IN ADMINISTERING THE COMPACT.

Other Governmental Departments and National Associations who co-operated with the National Recovery Administration in working out problems encountered in the administration of the Compact were:

United States Department of Labor

United States Department of Agriculture

United States Department of Justice -- United States Bureau of Federal Prisons.

United State Department of Commerce

United Stated Federal Emergency and Relief Administration

National Committee on Prisons and Prison Labor

The American Federation of Labor

Federated Womens' Clubs of America.

CHAPTER IX

EFFECT AND CONCLUSIONS

I. STABILIZATION OF PRICE STRUCTURE.

The Compact as approved by the President, April 19, 1934, and administered by the States Signatory through the Prison Labor Authority and the N.R.A., did eliminate to a large degree the burdening of the public market with prison goods manufactured, mined or processed under unfair competitive conditions. Article V of the Compact was the provision which made it a violation for prisons, contractors, or selling agencies to sell prison products at prices lower than the fair current price prevailing in the market where the products were customarily sold. However, it became the duty of the Prison Labor Authority, under the provisions of Article VII, Section 2 (d) of the Compact, after conferring with the affected free industry code authority, to determine the prices, charges and amounts necessary to establish the fair current price prevailing in the market where the goods were customarily sold. It was these two provisions which afforded the greatest net return to free industry of all of the elements of the Compact. When the Cotton Garment, Binder Twine or other affected code authorities would sit down with the Prison Labor Authority and arrive at a fair amount for labor and overhead to be charged against prison made goods before such goods entered the public market, the result was generally a better understanding of the corresponding industry problem which tended toward a stabilization of the prices which each would charge for like services and costs. In addition, agreements on price differentials and discounts, whether legal or not, aided materially in establishing a price structure which could be agreed upon by affected parties.

While a review of the files on this subject reveal that there were many complaints with respect to both the prisons and free industry selling goods at lower than file price or customary market price, it is acknowledged that the efforts made by the prisons to abide by their voluntary Compact diminished the dumping of prison goods on the market at lower than fair current prices.

II. ENCOURAGE UNIFORM PRISON OPERATIONS IN MANUFACTURING AND SELLING.

Article II and Article III of the Compact did establish uniform prison operations with respect to the hours of labor inmates were permitted to work in industrial production and the hours of operating productive machinery in the institutions. As a result of Article II, which limited the hours of labor in prison industries to not more than those prescribed by the applicable code (meaning the corresponding code for free industry), the prisons reduced their maximum hours per week per man from 40 hours to 36 hours in the manufacture of cotton garments upon notification of the approval of Executive Order No. 6828 affecting the hours in the Cotton Garment Industry.

Uniform sales policies, agreements between free industry code authorities and the Prison Labor Authority with respect to quantity discounts and percentage of mark-up for sales to wholesalers, jobbers and retailers, worked out fairly successfully during the period industry was

operating under Codes of Fair Competition.

III. DIVERSIFICATION SPREADS WORK AMONG PRISONERS AND EXPEDITES LATER REHABILITATION.

One of the major problems confronting all prison officials today is that of providing sufficient work in the institutions to keep the inmates employed on projects which have rehabilitative features. Although Article VII, Section 2 (f-1) of the Compact provided that the Prison Labor Authority was to formulate such regulations as may be consistent with statutory provisions and as may be necessary to assure a diversification of the output of prison industries in a fair proportion to the production of the industries affected, only a small amount of diversification of prison industries was accomplished while the Codes of Fair Competition and the Compact were in effect. The diversification program as originally intended when the Compact was formulated, was never given a fair trial. The concentrated efforts of such groups as the Cotton Garment Code Authority and others which were continually objecting to the sale of prison made goods on the open market undoubtedly resulted in some decrease in the total dollar value of clothing producted in prisons.

Thus it is evident that unless there is an outlet for the products made in penal institutions the result is very detrimental to society in that it is compelled to pay a greater proportion for institutional maintenance through taxation and the prisoner is not provided rehabilitative work which trains him for useful employment when he is discharged. It is agreed by all authorities that the diversification of industries in penal institutions apreads work among the inmates and by the spread of such work the inmates have the opportunity to receive training in the performance of varied tasks which is beneficial to them when they again join the ranks of free society.

IV. FUTURE LEGISLATION.

As the prison labor problem involves so many different elements, all of which are a part of our penological system it is believed the time has arrived when Federal Legislation should be enacted which will encourage the states to enter into a Prison Compact to which they may subscribe through approval by their respective legislatures. The objects and purposes of the Compact would be to:

(a) Maintain fair competition between products of private domestic industry and those of prison industry.

(b) To assure a diversification of the output of prison industries in fair proportion to the production of affected free industries.

(c) To relieve unemployment within the respective penal institutions of the states by providing work for the inmates of a rehabilitative and character building nature and lessen the dangers inherent to idleness.

V. STATE USE SYSTEM.

Many prison officials contend that it is necessary for penal institutions to sell their goods at prices lower than those charged in the

public market for free industry goods of a similar nature in order to counteract the effects of free industry propaganda and the attempts to establish boycotts against prison made goods. Such methods may be regarded as unfair competition and should be eliminated.

Because of the problems incident to the distribution of prison made goods, there has been advanced by some authorities a system of disposition to the state and its political subdivisions. This is commonly known as the State-Use system. Under this system, when properly enforced, it becomes possible to remove all prison goods from the public market. In theory the plan sounds simple but in enforcement and practical application it has many defects, particularly where it results in depriving free industry of its proportionate share of business from governmental institutions, thereby offsetting benefits which might be gained from the standpoint of labor and industry. On the other hand the State-Use System does eliminate prison made goods from the free industry market thereby doing away with the tendency to undermine the price structure. Furthermore it may be contended that the State-Use System, especially where it is tied in with a program of diversification of products, is more readily adaptable by the larger states. It seems to the writer that a partial state use system could be put into effect in every state in the Union and serve an economic benefit to each state however, an exclusive State-Use System as a means of solving the prison labor problem is regarded by many authorities as impractical and contrary to the best interests of the public in general. After all, from N.R.A. experience, prison competition is not as vicious as some industrial groups would lead us to believe. If the prison goods are manufactured and placed on the open market under fair competitive conditions, has not the public the right to be the judge as to whether or not it wants to buy such goods? Let us approach this life-long problem through the adoption of a Compact of Fair Competition for the Prison Industries and provide our inmates with productive labor. If this is done the tax burden for institutional maintainence can be lightened and prison production can be so diversified that no free industry will be compelled to carry a disproportionate share of prison competition. It is the writer's opinion that if an exclusive State-Use System is ever put into effect on a broad scale and proven successful the prisons must be guaranteed the exclusive market by the States and their political subdivisions for all prison products.

The Federal Government can be of assistance to the various states in advising and aiding them in the establishment of a diversified prison program, but under no circumstances would it appear to be sound policy to attempt to dictate to the states or try to force any program into effect which the states do not wish to voluntarily accept. However, where the States are willing to adopt an adequate State-Use System of marketing their prison products, it is believed such a system will generally meet with public approval.

VI. LEGAL REQUIREMENTS IN DISPOSING OF PRISON MADE GOODS.

As many of the states have enacted regulatory statutes for the purpose of identifying and controlling the shipment of prison made goods within their borders and the Congress of the United States has recently

enacted legislation with respect to prohibiting interstate transportation on prison made goods in certain cases, the latter commonly referred to as the Sumner-Ashurst Bill; (*) those dealing in prison made goods should constantly be informed with respect to the legal aspects thereof.

In order that the States Signatory to the Compact might have up to date knowledge of the shipping and labeling requirements of legislation effective in the various states, the Prison Labor Authority classified and listed the states as to legal requirements late in the summer of 1935, to the penal institutions under the jurisdiction of the Compact. A copy of the classifications is attached to this report as Appendix "L".(**) The information contained in Appendix "W", along with the action taken by the states which have passed legislation enabling certain provisions of the Hawes-Cooper Act, Appendix "C", to become effective is very useful to those dealing in prison goods. A list of states which have, up to December 4, 1935, accepted provisions of the Hawes-Cooper Act are listed in Appendix "M". (***) While there are many other statutes both Federal and State which have an important effect upon the distribution of prison made goods, those referred to in this Section are of vital importance and should be analyzed carefully if any future legislation relative to a New Prison Compact is contemplated.

The Federal Prisons operate exclusively under the state-use system, consequently none of the products made in these institutions enter the public market. However, the United States Bureau of Federal Prisons did become signatory to the Compact through the signature of its Director, Mr. Sanford Bates, who signed the Compact as a matter of cooperative effort, thereby lending the support of that Bureau to the Prison Labor Program under the National Recovery Administration.

(*) Bill, Public No. 215, 74th Congress.

(**) Appendix No. "L".

(***) Appendix No. "M".

APPENDIX A

INSTRUCTIONS TO COMPLAINANTS

AGAINST

UNFAIR PRISON COMPETITION

The quotations below, unless otherwise indicated, are taken from the letter of the Administrator to the President of April 18, 1934, transmitting for approval the Compact of Fair Competition for the Prison Industries of the United States of America. This agreement will be referred to as the "Prison Labor Compact" or simply as the "Compact".

"A Compact of Fair Competition for the Prison Industries of the United States of America has been signed by the governors or prison executives of the following twenty-eight States of the United States of America:

Alabama	Maryland	Pennsylvania
Connecticut	Massachusetts	Rhode Island
Delaware	Michigan	South Carolina
Georgia	Minnesota	South Dakota
Illinois	Missouri	Tennessee
Indiana	Nebraska	Vermont
Kentucky	New Hampshire	West Virginia
Louisiana	New York	Wisconsin
Maine	North Dakota	Wyoming
	Oklahoma	

It is expected that the Compact will be signed by other states in the future. This has been the result of a long and continous effort by this Administration to establish and maintain fair competition between products of private domestic industry and those of prison industry."

The state of Iowa has also subscribed to the Compact.

Some of the general provisions of the Compact are mentioned in the next paragraph of the Administrator's letter which follows:

"The Compact covers products mined, manufactured, produced or distributed by prison labor in the state signatory to the Compact. It limits the hours of labor in prison industries to not more than those prescribed in the applicable code, adopted under the laws of the United States governing each particular industry, and provides further that in no case shall any inmate be required or permitted to work more than forty hours in any one week. The hours of operation of productive machinery are limited to not more than is prescribed in the Code of the competing private domestic industry. It prohibits the employment of persons under sixteen years of age in any prison industry and of persons under eighteen years of age at operations or

occupations which are hazardous in nature or dangerous to health."

Most of the complaints against prison competition allege that the prison is selling in the open market at a price which is below fair current prices prevailing in the market in which the product is customarily sold. Under the Compact it has been agreed by the States that

> "Prison products, when sold by the prison or through a contractor, whether sold direct or through any agency, shall be sold not lower than the fair current price prevailing in the market in which the product is customarily sold - to wholesalers, retailers, or consumers as the case may be." Article V, Section A.

Under Article Vii, Section (1), of the Compact, there is created a Prison Labor Authority which has the power and duty to enforce compliance by subscribing states. The Compact also provides the procedure to be followed by an individual complaining that the Compact is not being observed. The Prison Labor Authority has the power and duty,:

> "To hear and adjust complaints arising under this compact made by affected parties: Provided, however, that at the time any such complaint is made the complainant must agree to submit such facts and figures as may be necessary to the determination of the issues involved." Article Vii, Section 2 (g).

Any complainant who is covered by a Code should forward to his Code Authority his complaint. Accompanying his complaint he should forward the facts and figures which sustain his complaint and which are necessary to the determination of the issues, or in the alternative he should indicate his willingness to appear before the Prison Labor Authority and present such facts and figures. The Code Authority should forward this complaint, together with any other complaints of the same nature, to the Prison Labor Authority, c/o J. V. Bennett, Tower Building, Washington, D.C. The Code Authority should then request that the complainant be granted a hearing before the Prison Labor Authority. The Code Authority may send such representative or representatives as it wishes to this hearing. (One copy of each complaint and of the supporting papers should be enclosed.)

It is also provided in the Compact that it shall be a power and duty of the Prison Labor Authority

> "To determine, after conferring with the Code Authority of the industry affected and upon request of any person or firm affected, the prices, charges and amounts provided for in Article V, Sections A and B hereof; such determination to be subject to appeal to the President of the United States." Article VII, part of Section 2 (d).

The representative or representatives sent by the Code Authority to the hearing should be authorized by the Code Authority to express its view of the matter at the hearing.

In the Compact it is made the duty of the Prison Labor Authority to determine the fair current price which is to prevail in a given market when complaint is made.

The subscribing States have also agreed that prison labor will not be contracted to provide manufacturers for small return which would affect the competing outside labor. This part of the agreement is contained in Article V, Section (b). If there is any complaint alleging the non-observance of this latter provision, the complainant should follow the same procedure in submitting his complaint.

The various Code Authorities have been informed of their rights to co-operate in this matter. They also have a copy of these instructions and we feel sure that any well-founded complaint will receive careful consideration from the appropriate Code Authority.

APPENDIX B

SIXTY INDUSTRIES

which have been successfully established in prisons in the U.S.A., and the Code Authority addresses.

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*1. Abattoir. Beef and pork products, lard, sausage, smoked meats, etc.

2. Agricultural Implements. (Farm Equipment Manufacturing Industry)

3. Automobile Tags, Hunters' Licenses, etc. (Marking Devices Industry)

4. Bags, bagging, burlap, and jute products, spinning and weaving (Textile Bag Industry, Hair & Jute Felt Industry)

5. Baskets, split wood (Lumber & Timber Products Industry)

6. Binder twine, rope cordage, etc. (Cordage & Twine Industry)

7. Book Bindery, including the re-binding of school and library books. (Book Publishing, Book Sellers Trade Industry)

8. Brooms, corn and fiber, and brushes, paint, scrub, staple set and rubber set, etc. (Broom Manufacturing, Brush Manufacturing)

9. Canning, including fruits, vegetables, pulping, butters, vinegar, etc. (Canning Industry)

10. Cement Manufacturing mill. (Concrete Masonry, Concrete Pipe Mfg.) Cement Products: Blocks & posts, culvert pipe, garden furniture and ornaments.

11. Cotton Garments: Children's play suits, dresses, hoover aprons, smocks, pajamas, night gowns, etc.

Coats, pants, breeches, and knickers for men and boys of cotton and duck.

Overalls and coveralls.

Shirts, dress, work, blouses, flannel, etc.

Underwear, men's shirts, shorts, and women's undergarments

Cotton yardage, including duck, sheeting, shirting, ginghams. percales, broadcloth, denim, toweling, ticking, knitting yarns, and mop yarns.

(Underwear & Allied Products Industry, Undergarment & Negligee Industry, Cotton Garment Industry)

(*) No code approved

12. Spinning, Weaving, Finishing (Hair and Jute felt Industry)

13. Dehydration, fruits, vegetables, etc.
(Pacific Coast Dried Fruit Industry)

14. Foundry products, including hollow ware manhole frames and covers, alley grates, lamp posts, valves fittings, spigets, hydrants furnace parts, etc.
(Fabricated Metal Products Manufacturing & Metal Finishing and Metal Coating Industry)

15. Grey iron. (Grey Iron Foundry)

16. Brass, bronze, and aluminum (Copper & Brass Mill Products Industry Copper, Brass, Bronze & Related Alloys Trade, Aluminum Industry)

17. Furniture, (wood) office, household, and institution. Beds, bureaus, desks and tables, chairs, benches and settees.
(Furniture Manufacturing)

18. Files, cabinets. (Office Equipment Mfg. Industry)

19. Caskets. (Funeral Supply Industry)

20. Galvanizing, hot and electric-galvanizing and nickel plating.
(Galvanized Ware Manufacturing)

21. Handles, ax, pick, broom and brush. (Lumber & Timber Products Industry, Broom Mfg. and Brush Mfg.)

22. Highway Markers, street and road signs, etc. (Marking Devices Industry)

23. Harnesses, whips and leather goods. (Saddlery Manufacturing)

24. Hats, caps, and gloves (Hat Manufacturing industry, Cap & Cloth Hat Industry)

25. Hosiery, men's, women's, children's, work and dress (Hosiery Industry)

26. Ice. (Ice Industry)

27. Knit goods, including underwear and sweaters
(Knitted Outerwear Industry, Underwear & Allied Products Industry)

28. Laundry and dry cleaning (Laundry Trade)

29. Mattresses and pillows (Bedding Manufacturing Industry)

30. Mill work and pattern work. (Lumber & Timber Products Industry)

31. Metal working: Aluminum ware, stamped and spun (Aluminum Industry)

32. Galvanized and tin ware, tin cans. (Galvanized Ware Mfg.)

33. Badges and Seals. (Marking Devices Industry)

34. Files, lockers, shelving, metal furniture, wire products, baskets, trays, fly swatters, etc. (Fabricated Metal Products Mfg.)

*35. Nursery, reforestration, and shrubbery

37. Paint, including traffic paint, house paint, varnish, etc. (Paint, Varnish & Lacquer Mfg.)

38. Printing and ruling, including job, reports, forms, school books. (Printing Equipment Industry & Trade, Book Manufacturing Industry, Book Publishing Industry)

39. Rugs, carpets, runners, etc. (Carpet & Rug Mfg. Industry)

40. Rubber products, including mats, and tire retreading (Rubber Mfg. Industry)

41. School Furniture (Furniture Mfg. Industry)

42. Shoes and Shoe Repairing (Boot & Shoe Mfg. Industry)

43. Soap, including chip, toilet, powders, insecticides, and disinfectants. (Soap & Glycerine Mfg. Industry)

*44. Snow fencing

45. Quarrying, crushed rock, building stone and cast stone. (Marble Quarrying & Finishing Industry, Building Granite Industry)

46. Brick, tile, and clay products (Structural Clay Products Industry)

47. Sugar, cane or beet, including molasses, syrups, etc. (Beet Sugar Industry)

48. Suits, uniforms, and overcoats (Cotton Garment Industry)

49. Tanning Industry (Leather Industry)

50. Toys, wooden and Metal (Toys & Playthings)

(**) No code approved

51. Wicker, willow, and rattan ware (Lumber & Timber Products Industry)

52. Woolen Yardage, including blankets, suiting.
(Woolen Textile Industry)

53. Scouring (Steel Wool Industry)

54. Woolen Yardage, Spinning, Weaving, Finishing
(Woolen Textile Industry)

APPENDIX C

NATIONAL RECOVERY ADMINISTRATION

IMMEDIATE RELEASE
OCTOBER 16, 1934 RELEASE NO. 8314

TEXT OF COTTON GARMENT COMMITTEE REPORT

The text of the report submitted to the National Industrial Recovery Board October 10, by the Cotton Garment Committee is given below.

The appointment of this committee was directed in the Executive Order which stayed until October 15 an amendment to the code to reduce the maximum work-week to 36 hours and increase the schedule of minimum wages. The committee was empowered to "hear protests, investigate the facts and report its recommendations on or before October 10." It is composed of D. M. Nelson, member of the Industrial Advisory Board, Williard Hotchkiss, Chairman of the NRA General Code Authority; and W. Jett Lauck, economist.

The text of the report follows:

"The Cotton Garment Industry has requested reconsideration of amendments to Articles III and IV of the Code of Fair Competition for the Cotton Garment Industry which amendments were approved by Executive Order No. 6828 of August 21, 1934.

"This Committee has been constituted a Board of Review to consider this request.

"The Code of Fair Competition for the Cotton Garment Industry as approved on November 17, 1933, contains in Article III on the subject of hours, the following language:

> 'A. No manufacturing employee shall be permitted to work in excess of 40 hours in any one week, or more than 8 hours in any one day, provided, however, that the Cotton Garment Code Authority shall, immediately after the effective date begin an investigation under such rules and regulations as to reports as the Code Authority may require and the Administrator approve, to determine whether or not the 40-hour week provision of this section is resulting in increased employment, and the said Code Authority shall report its findings on this question to the Administrator not later than 60 days after effective date, so that the Administrator may determine whether or not the provisions of this Article shall be changed.'

"Article IV on wages is also effected by the Order.

"At the instance of the Code Authority for the Dress Manufacturing Industry and the Code Authority for the Men's Clothing Industry, hearings were held in Washington on June 18, 19, 20, and 22, to determine among other things whether or not the 40-hour provision of the Code should be modified.

"These hearings were participated in by a large number of the members of the Cotton Garment Industry representing every branch of the Industry and every section of the country. The widest opportunity was also given for other interested parties, including numerous members of Congress, to present views and submit facts in respect to this issue.

"At these hearings the Code Authority was represented by the Chairman, the Director, the Counsel, and the statistical staff.

"In addition to the representatives of the above mentioned Code Authorities for the Dress Manufacturing Industry and the Men's Clothing Industry, representatives of Labor presented arguments for the shortening of hours below the 40-hour limit originally provided in the Code and the adjustment of piece rates.

After the hearings, the Division of Research and Planning of the National Recovery Administration caused a study to be made as to the operation of the 40-hour provision expecially in respect to employment as revealed by the statistical data prepared and presented by the Code Authority and many conferences were held in which members of the Industrial Advisory Board, the Consumers Advisory Board, and the Legal, Economic, and Administrative staffs of the National Recovery Administration participated, and all of them at one time or another gave full expression to their respective views.

"The Committee has reviewed carefully the complete records of this case to date.

"Neither the state of facts upon which the case came before us nor the time available indicated an occasion, on our part, for the assembling of original new data. Nevertheless, we have interpreted our status as a review board broadly and have excluded no new facts or viewpoints which might have a bearing on the issues.

"Immediately upon our appointment we conferred with the attorney of the Code Authority and arranged to visit its offices in order to have direct access to the data which it has assembled. In connection with this visit the attorney, the chairman, representatives of the statistical and compliance staffs of the Code Authority and members of the industry designated by the Code Authority presented the case of the industry. By mutual assent, proceedings were informal and largely in the nature of conference, but a transcript was kept and has been carefully reviewed along with numerous exhibits which were placed in the record.

"We requested the Labor Advisory Committee to arrange for similar conferences with such representatives of Labor as were known to have an interest in the questions at issue. A transcript of these proceedings was also made and carefully studied.

"Representatives of those Codes which were known to have overlapping interests with the Cotton Garment Code were also asked to present any

pertinent material. In this group there was representation of manufactures who operate both under the Cotton Garment and other Codes. A transcript of these proceedings was made and studied.

"In addition to securing facts and views from the above groups, we have received and considered all volunteer contibutions, oral or written, including an oral presentation by former Senator James A. Reed and Mrs. Reed, speaking particularly from the standpoint of the Donnelly Garment Company of Kansas City.

"Finally, we have cleared with the appropriate divisions of the National Recovery Administration as to the history and status of the case from a legal and factual point of view.

"The record of the case indicates that decisions hitherto have rested for the most part on statistics prepared in the offices of the Code Authority by its agents. Exhibits containing new data and new interpretations have now been presented which do not entirely harmonize with earlier reports, especially in respect to pre-code and post-code employment. The present director of statistics of the Code Authority was associated with the previous director, who was in charge of the earlier studies, and has testified that there were no changes in the schedules used in securing information for the earlier and the later reports and that instructions accompanying the schedules as well as the handling of the data were the same in respect to each of the reports.

"Upon these representations the committee at once decided to give consideration to the contention of the Code Authority that new facts meriting serious consideration by a review board are now available and to weigh the information now presented as it stands before undertaking any detailed checking on our own account of earlier and later reports as to either their conclusiveness or their statistical comparability.

"In the judgment of the committee there is no zone of factual controversy wide enough to have a crucial bearing on our decision.

"The Code Authority, as we have understood the testimony and accompanying exhibits, is convinced that there was relatively heavy employment in the industry during the later phases of the depression preceding the code. This they attribute to the fact that the consumer's depleted purchasing power permitted him to buy only low-priced merchandise. Unrestricted competition in the Cotton Garment Industry at that time, as the Code Authority interprets the situation, led to exceedingly low wages, lengthening of hours and extremely low prices for merchandise.

"When the code came along and established the 40-hour week with a $13.00 minimum wage in the north and $12.00 in the south, it increased costs and narrowed the differential in price between the products of the Cotton Garment industry and competing goods of other industries, at a time when reemployment in other industries was enabling more people to purchase goods in the higher price brackets. The effect of all this, they say, was materially to reduce volume of business and hence

employment in the Cotton Garment Industry.

"Beneficent and desirable as all the official representatives of the industry who appeared before us believe the standards originally set up in the Code to have been, its immediate effects, they say, were extremely burdensome. For this reason, and because they contend that enforcing the provisions of the amendment will further increase cost and preclude any early possibility of increasing employment, they urge the necessity of a breathing spell in which the industry may adjust itself to burdens already assumed.

"The end costs of goods manufactured under the Cotton Garment Code today result in part from burdens already assumed under this code which the industry freely accepts. In part, they represent increased costs of materials which reflect the cotton processing tax and costs which embody new labor standards in other codes. Concerning all these elements of cost there is no controversy.

"In these circumstances the Committee has sought the competent testimony of the members of the industry who appeared before us as to the amount by which enforcement of the provisions of the amendment would presumably raise prices the consumer would have to pay for articles manufactured under the Cotton Garment Code. The testimony on this point is not unanimous but there appears to be substantial agreement that the cost of a forty-nine-cent work-shirt would not be increased more than five cents, and other cotton garments in a substantially similar ratio to retail price.

"While reemployment is an outstanding objective of the NIRA, bringing sub-standard industries measurably up to competing standards is, we believe, also an important objective. The industry, as represented by the Code Authority and its staff has wisely faced the fact of the previous low standards and it expresses gratification that standards have been raised. To all appearances, the Code Authority is making an earnest and well directed effort to make the standards now officially in force effective throughout the industry. We are convinced, however, that in its anxiety about being able to hold its lines, the Code Authority greatly over-emphasizes the possible adverse effects upon enforcement and upon the welfare of the industry that any increases in cost that can possibly flow from carrying out the terms of the amendment may have.

"Moreover, we believe they have not given sufficient recognition to the prejudice to the public interest and to industrial stability that must result from maintaining through official approval pockets of production under lower labor standards along the competitive border line of industries whose codes enforce higher labor standards. The tendency of production to seek these low standard pockets is inevitable and in the long run, is bound to complicate the problem of enforcement not only for the Codes with the higher standards but for all Codes that operate within a given competitive field.

"From our discussions with the director of compliance of the Cotton Garment Code Authority, we believe his excellent organization has now reached a point at which, irrespective of the amendment, it will need to require a filing of all piece rates with the Code Authority and proceed as rapidly as possible with such a degree of standardization as will enable the Code Authority to assure itself of the integrity of all piece-rate structures under the Code. As we see the situation, this is the only material departure from existing practice under the Code which the change to a 36-hour week with the maintenance of present wages for week workers and a 10 per cent addition to piece rates existing on May 1, 1934, will require.

"We admit freely that the terms of the amendment may result in some inequity as between relatively high-standard and low-standard producers, but we cannot see that these are any greater than is likely to accompany any over-all ruling.

"For all these reasons we recommend that Executive Order No. 6828 of August 21, 1934 be sustained.

"We recommend further, however, that effective date of the Order be made December 1, 1934. Our reason for this second recommendation is that the Fall Season in the industry will then be over, and time will thus be given to the industry to make necessary adjustments or changes in its working plans and procedure.

"In respect of the sheep lined and leather garment subdivision of the Cotton Garment Industry the time limit for our decision precluded consideration of proposals made by representatives of the industry. These proposals appeared to merit further consideration and we therefore request an extension of time as to this item.

"In arriving at this decision we cannot fail to recognize the competition of products of prison labor and of sheltered workshops on certain subdivisions of the Cotton Garment Industry. We therefore recommend that the National Industrial Recovery Board designate a commission to investigate the effect of this competition, to study the operation of the prison labor compact, especially as to the enforcement of the standards of competition with private industry there set up, and report not later than December 1, 1934 upon ways and means of effectively meeting this issue.

"While the committee recognizes that there will be occasion in some instances for indulgence to particular producers for cause duly shown and authenticated, we believe that anything resembling wholesale exemptions would undermine the code and the splendid enforcement results which the Code Authority, as now set up, is accomplishing. We recommend, therefore, that the scope of any machinery provided under the amendment for hearing pleas for indulgence be scrutinized with great care so that its decisions may improve and not impair compliance.

"We wish to commend the organization and the personnel which the Code Authority has set up to enforce compliance with all of the provisions of the Code. Under peculiarly difficult conditions, they have achieved most gratifying results. It is highly essential that in applying the provisionsof the amendment no action be taken which would undermine or discourage progress in this important field of activity."

APPENDIX D

For Release
November 28, 1934

Release No. 9029-A

NATIONAL RECOVERY ADMINISTRATION

REPORT OF COMMITTEE ON
COMPETITION OF PRODUCTS OF COTTON GARMENT INDUSTRY
WITH PRODUCTS OF PRISON LABOR AS DIRECTED BY
EXECUTIVE ORDER NO. 118-135
of October 12, 1934.

Washington, D. C.
November 26, 1934

Committee
Joseph N. Ulman, Chairman
Frank Tannenbaum
W. Jett Laub

Washington, D. C.
November 26, 1934.

To the
National Industrial Recovery Board

Gentlemen:

This letter of transmittal is to be regarded as an integral part of the report of the undersigned committee, submitted in accordance with the order of the President dated October 12, 1934. That order directed us to "investigate the effects of competition between the products of prison labor and sheltered workshops on the one hand and of the cotton garment industry on the other, study the operation of the Prison Labor Compact especially as to the enforcement of the standards of competition with private industry established therein, and report to the National Industrial Recovery Board, concerning said matters not later than December 1, 1934."

In order to consider adequately the relatively narrow questions that have arisen and will arise between the Prison Labor Authority and the several Code Authorities administering industries subject to prison labor competition, we have taken into account the whole question of prison labor as it is related to

(a) the underlying purposes of imprisonment for crime;
(b) the economical and effective administration of prisons;
(c) the extent and effects of competition between prison labor and free labor in specific industries;
(d) the developed policies of State and National governments in relation to the whole subject;
(e) attitudes of industry;
(f) attitudes of labor;
(g) the relationship of a proper regulation of prison labor to a rational attack upon the problem of crime.

At the outset we realized that we were dealing with a complex problem, about which it would not do to make a report based upon our general knowledge of the subject as obtained from the pre-existing literature. Particularly with respect to the narrower question before us, everything in the literature is outmoded by reason of the operation of the Prison Labor Compact and the changes it has made or attempted to make in the competitive relationships between prison industry and free labor industry. Therefore, we devoted the first part of the month to extended hearings at which there testified representatives of industry; of labor; of prison administration; of the legal and other divisions of NRA; and one witness who spoke not for any party to the manifold controversy but from the viewpoint of scientific criminology.

The case of industry was presented by the following witnesses:

Raymond A. Walsh, General Counsel, Cotton Garment Code Authority.
Col. R. B. Paddock, Executive Director, Cotton Garment Code Authority.
Ben Geaslin, Assistant Counsel, Cotton Garment Code Authority
A. B. Dickinson, Washington Representative, Cotton Garment Code Authority.
Herbert Mayer, Chairman, Prison Committee, Cotton Garment Code Authority.

A. B. Salent of Salent and Salent, Incorporated.
Isadore Fine, President, National Workshirt Manufacturers Association.
Harry Johnson, Oberman and Company,
W. W. Harlin, Prison Committee, Cotton Garment Code.
C. F. Habegger, Prison Committee, Cotton Garment Code.
L. M. Jones, Prison Committee, Cotton Garment Code.
Walter Mitchell, Jr., Executive Secretary, Furniture Manufacturers Code Authority.
D. P. Porterfield, Director, Department of Marketing, United Typothetae.
J. H. Nelson, Secretary, Trade Practice Committee, Public Seating Industry.
W. C. Craig, Chairman, Binder Twine Agency of Code Authority.
J. S. McDaniel, Executive Secretary, Cordage and Twine Code Authority.

Organized Labor expressed its view through -

Thomas Rickert, President, United Garment Workers.
Charles N. Green, International Ladies Garment Association.
William C. Rushing, American Federation of Labor.
G. E. Meadows, American Federation of Labor.
Miss Rose Schneiderman, Labor Advisory Board, National Recovery Administration.
Jacob Petofsky, Assistant President, American Clothing Workers.

Sidney Hillman, in his dual capacity of President of the Amalgamated Clothing Workers and Member of the Labor Advisory Board, also conferred with us, although his statement is not included in the stenographic transcript. However, Mr. Hillman iterated to us the views expressed by him at the hearing before Acting Division Administrator Collins on May 26, 1934, which we have read and considered.

Prison Administration presented its case through -

Hon. Sanford Bates, Director, Federal Bureau of Prisons.
Mr. James V. Bennett, Secretary, Prison Labor Authority.
Mr. Howard S. Gill, Economic Adviser, Prison Labor Authority.
Mr. Walter N. Thayer, Commissioner, Department of Correction, New York State.
Mr. H. H. Stewart, Superintendent, Prison Industries, State of Alabama.
Mr. Robert Chapman, Superintendent, Prison Industries, Missouri State Prison.
Mr. L. E. Kunkle, Warden, Indiana Penitentiary.
Mr. E. L. Pardue, Superintendent, Industries State of Tennessee.
Mr. C. L. Stebbins, Superintendent, Michigan State Industries.
Mr. Samuel E. Brown, Warden, Oklahoma Penitentiary.
H. E. Donnell, Superintendent, Prisons of State of Maryland.

We obtained important information regarding NRA policies and especially

the steps leading to the formation of the Prison Labor Compact and its administration from-

Mr. Linton M. Collins, Acting Division Administrator, National Recovery Administration.
Mr. J. M. Keating, Legal Adviser, Dress Manufacturers' Code Authority. Formerly Legal Adviser to National Recovery Administration on the prison labor problem.
Major B. H. Gitchell, Special Adviser, National Industrial Recovery Board.
Mr. H. E. Wahrenbrock, Legal Adviser, National Recovery Administration.
Mr. Peter Seitz, Legal Adviser, National Recovery Administration.
Mr. Lester Kintzing, Industrial Advisory Board, National Recovery Administration.
Mr. Mercer G. Johnston, Consumers Advisory Board, National Recovery Administration.
Mr. Sol A. Rosenblatt, Division Administrator, National Recovery /Administration.
Mr. David Ziskind, Labor Advisory Board, National Recovery Administration.

A detached view on many of the most vexed questions before us was presented by Professor Louis N. Robinson, of Swarthmore College. Professor Robinson is author of a standard book on prison labor - "Should Prisoners Work?" He came at our express invitation to answer questions that had arisen out of the other testimony.

It thus appears that in spite of the short time at our disposal we have tried to assemble the pertinent facts and that our conclusions and recommendations are based mainly upon data taken from life rather than from books. For statistics prior to 1932 we have relied upon Bulletin No. 595 of the Bureau of Labor Statistics. Volume 9 of the Report of the National Commission on Law Observance and Enforcement (The Wickersham Commission) has been helpful to us. This deals with the whole subject of Penal Institutions and contains a valuable chapter on Prison Labor.

The testimony taken and exhibits filed with us comprise a stenographic record of over 1200 pages. It would not be practible to summarize the statements of the several witnesses but is important to state that we have afforded all interested parties full opportunity to be heard. Through their several spokesmen they have stated their respective positions clearly and vigorously. These must be set out briefly and objectively because our conclusions flow directly from them.

The Argument For Industry

This part of the testimony falls into three sections.

First - The Cotton Garment Industry.

From this source and form Organized Labor arises the most vigorous and determined opposition to the present status. Essentially, this industrial group demands the absolute and immediate removal of prison-made goods from

the open market. It repudiates the workability of the Prison Labor Compact as a means to insure fair competition. It claims that a continuance of prison-made goods upon the open market will destroy the Cotton Garment Code and push the industry back into the miserable sweat-shop conditions from which it is emerging. It has a special grievance growing out of the grant to prisons, members of the Compact, of the National Recovery Administration Blue Eagle label which the industry declares is a fraud upon the consuming public. It claims that the action of Congress in adopting the Hawes-Cooper Act in 1929 led the industry to expect the virtual elimination of prison labor competition by 1934 and that relying upon that expectation its larger units have withdrawn from prison manufacture and made large new plant investments outside of prisons. It claims that it was misled further by early action on the part of the National Recovery Administration apparently looking to the immediate abolition of prison competition: e.g., the flat prohibition in the original drafts of the Retail Code, and special exemptions granted by the Labor Advisory Board regarding wages to apprentices in the industry. This industry also charges that the Prison Labor Authority in administering the Compact has failed entirely to cooperate with the Cotton Garment Code Authority and the Administrator in charge of that Code, has relied upon misleading data regarding current prices of merchandise, and has insisted improperly upon an excessive labor cost differential favorable to prison labor as against free labor.

Asked whether they would prefer the untrammelled competition of unregulated prison industry to further efforts to coordinate the industry with free-labor industry under the Compact, the representatives of the garment trade answered emphatically "Yes". They profess absolute disdain of the possibility of effective control of prison manufacture; some of their spokesmen charge every agency of prison management with direct bad faith. They claim that unless the competition of prison labor is absolutely eliminated, the entire industry will be ruined and its 165,000 employees will be thrown out of employment.

The testimony given by this group is important out of all proportion to its accuracy in detail. A state of mind, whether based on fact, fear, or fancy, is something that must be reckoned with. These manufacturers are determined that competing prison labor must go. They regard the Prison Labor Compact as a means of perpetuating it, of increasing rather than decreasing the competition or prison made goods with those of their own manufacture. Right or wrong, they are prepared to fight on this issue to the bitter end. In this fight they are working hand in hand with labor, and they have the support of large sections of the distributing trade and the consuming public. Such women's organizations as the Federation of Women's Clubs, the Consumer's League and others have joined the manufacturers and labor in the dissimination of the thought that goods made in a prison are essentially wicked goods that must not enter into commerce.

This group favors the State Use System of prison production.

Second - <u>The Twine and Cordage Industry.</u>

Although the prisons produce one-third of the binder-twine made in this country, this industry seems willing that prison industry in this line shall continue, provided that under the Prison Labor Compact there can be secured

equality of competitive prices, and provided that each State shall confine its sales within its own borders. It relies upon the Hawes-Cooper Act and the Prison Labor Compact as means toward these ends, although it complains that a differential in favor of prison labor costs has been set up and that there has been a lack of cooperation with the industry in the fixing of prices of prison-made goods. It makes no charge of bad faith, but asserts vigorously that administration of the compact has been inefficient.

Third - Other Industries, particularly Furniture, School Desks, etc.

Witnesses appearing before us indicate no immediately pressing questions in these lines. Generally, they object to a labor cost differential favoring prisons and urge closer cooperation between Prison Labor Authority and the several trade Code Authorities. They favor the State Use System but admit that in some States where that system prevails certain industries have succeeded in curtailing the distribution of prison-made products to state, county, and municipal agencies of government.

The Arguments of Prison Management.

The case for Prison Management was presented in part by persons like the Hon. Sanford Bates and Dr. Walter N. Thayer, who have no personal or official connection with the controversial questions before us, and in part by various wardens, managers of prison industry, State Superintendents of Prisons and others who are concerned directly with the conflict. Upon certain points they all agree and it is not possible in a brief abstract to emphasize these points adequately.

1. Prisoners Must Work.

2. If imprisonment is to have any value as an agency for rehabilitation, prisoners must work in productive enterprises on a full time basis and under conditions approximately the same as those prevailing in free society.

3. There is now and for years there has been an appalling amount of idleness in most prisons; idleness in prison has increased greatly during recent years and will increase beyond the safety-point unless a remedy is found at once.

The evidence we have heard from this source has confirmed and intensified our conviction that prison management faces a grave crisis. A prison filled with idle men is a prison ready for riot and bloodshed. But even worse than that, the whole scheme of criminal justice and imprisonment for crime becomes nugatory, socially wasteful, and a mockery unless prison life can be made a constructive experience for the individual sent to prison.

These witnesses concede that prison labor ought not to compete with free labor to the injury of the latter, and that products made in prison ought not be sold in the open market at prices that will depress the market price of like products. They assert that the Prison Labor Compact assures these conditions of fair competition. Under the Compact, contractors hiring prison labor are required to pay the prisons at rates based on the rates of pay for free labor, and States manufacturing and selling under the States Account System are required to sell at prices determined upon the basis of current prices of like products in the place where such sales are made.

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Compliance with these provisions of the Compact is sought to be assured by a Prison Labor Authority, with powers and duties similar to those of the various Code Authorities under National Recovery Administration. Similarly, the Prison Labor Authority has obtained the right to issue to States and contractors operating under the Compact, a Blue Eagle label for use on garments manufactured in prison and is planning to issue similar labels to other prison industries when labels are required under the respective codes affected.

The labels now in use differ from ordinary NRA labels only in bearing the word "Compact" instead of a Code number. No ordinary purchaser of goods would be likely to observe the difference. This similarly (denounced as a fraud by the spokesman for industry and labor, see infra) is defended by prison management, however, upon the grounds that the operation of the Compact has made prison labor competition fair competition, for the reasons stated above, and that without the label goods made in prison will be barred from the channels of retail trade by the terms of the Retail Code.

When their attention was called to the arguments of Industry and of Organized Labor against the label (see infra) these witnesses insisted that the prisons ought, as a matter of right and justice, to enjoy the benefits of the label, as compensation for the freedom of action they have given up by entering into the Prison Compact. We then directed their attention to the fact that the Prison Labor Authority has granted prison-made goods a differential in labor cost amounting to approximately 2 per cent to 3 per cent of their selling price as compared with goods made by free labor. When pressed, a number of these witnesses admitted that it was hard to justify both the label and the differential, although others insisted that without the differential they could not continue to manufacture and sell. All asserted that the label is absolutely essential and that if it is withdrawn the Prison Compact will be dissolved at once. This result they viewed with grave concern as they felt that the Compact is the first constructive step toward a real solution of the prison labor problem.

They testified that idleness in prison increased sharply early in 1934 due to the operation and the anticipated further effects of the Hawes-Cooper Act, and that although productive labor has begun to revive under the Compact there is at the present moment far less employment for prisoners than there was in 1933 and before that date. They admitted that prison industry has been concentrated in the manufacture of garments to an extent that explains, if it does not justify, the complaints of that industry and of labor. They explained this concentration as growing our of the following factors:

(a) the relatively small plant investment as compared with other forms of manufacture:

(b) the degree to which sewing machine labor lends itself to effective prison management and discipline.

"A large group of men, each anchored at a sewing machine, can be guarded with a minimum of supervision. They need not move about as in other shops and they use no tools that can be employed as weapons." To the suggestion that men in prisons working at this form of industry acquire

no knowledge that will help them make a living when released, because outside prison similar work is done by women almost exclusively, they replied that such prisoners learn habits of industry and the discipline of shopwork.

However, the more progressive members of this group admitted freely that there ought to be greater diversification of prison industry and that it should be planned and operated with the main emphasis upon its value in fitting the prisoner to make an honest living when released from prison. Ninety-four per cent of the men incaracerated are released, sooner or later. The large proportion who relapse into criminal activity (recidivists) suggests that imprisonment fails in its aim to protect society by stamping out the criminal tendency. Most serious crimes are committed by former prisoners. A more thoughtfully conceived prison labor policy would be of outstanding value in society's war against crime.

These same witnesses agreed that the best plan to accomplish these constructive ends is the State Use System. They pointed out, however, that its introduction on a comprehensive scale will necessitate large capital outlays for plant construction and that the States in which these expenditures are the most needed are in many instances quite unable to raise the necessary funds. One State was mentioned where the needle trades are practically the only prison industry, and where it has been necessary to cut drastically school terms and teachers' salaries because the State's finances are at such a low ebb. The Governor of another State has not merely demanded that the Compact be administered to as to afford an outlet for the goods manufactured in the prisons of his State, but has addressed a letter to the President announcing that the State itself proposes to take legal action challenging the constitutionality of any action which would deprive the state of its investment in its prison factory.

In short, while this group as a whole favors the State Use System in principle, it emphasizes the practical difficulties that stand in the way of its general adoption. Therefore, its members urge that the Prison Compact be upheld and that practice under it be perfected; but they are positive that this can be accomplished only if the NRA label for prison made goods is continued in its present form. In answer to the suggestion that this label differs only metaphysically from the ordinary NRA Blue Eagle Label of commerce and therefore operates as an instrument of deception to which the Federal Government ought not give its sanction, they reply that under the Compact the labor of men in prison must conform to the same standards of hours, compensation, and sound working conditions as are required for free workers. They tend to blink the obvious facts that compensation paid to a State by a prison contractor is not precisely the same thing as wages paid a worker for his and his family's support, and that many States operating prison factories on the State Account System justify the payment of merely nominal wages to their prisoners (often as low as 50 cents a month) on the ground that the State spends $1.00 or more per day to feed, house, clothe and guard each prisoner, And they ignore entirely the additional fact that goods made in prison and bearing the Blue Eagle label can by no stretch of the imagination be said to have been produced by labor invested with the right to collective bargaining.

THE ARGUMENT OF ORGANIZED LABOR

The witnesses for organized labor take a firm and uncompromising stand. They assert:

(a) Competition in the open market between goods made in prison and free labor production must cease at once.

(b) The Hawes-Cooper Act is sound policy and good law.

(c) The Prison Labor Compact has no legal or moral right to an NRA Blue Eagle Label. The present form of label works a deliberate fraud upon the public and is unfair to labor.

(d) To them the foregoing principles are so fundamental and so irrefutable that one of the principal witnesses in this group refused to discuss, even by way of assumption for the purpose of argument, such questions as (1) whether the differential allowed in favor of prison labor is so great as to defeat fair competition under the compact or (2) what, if any, administrative changes may be desirable to bring about a better cooperation between the Prison Labor Authority and the several competing Code Authorities.

This position is founded, says labor, upon long and bitter experience. Its spokesmen declare that they have absolutely no confidence in the Prison Group and refuse to deal with them. They avow a hostility to the Prison Compact that admits of no compromise. Asked if they would prefer the unregulated and uncontrolled competition of prison labor if the Compact is dissolved they do not hesitate in their answer. They assert that general public sentiment agrees with them that prison made goods are "outlaw goods," that Congress has so declared in the Hawes-Cooper Act, that many States have adopted supporting laws, and that Labor will carry on its fight no matter what this committee or any other committee may recommend until all prison made goods are driven off the competitive market. They assert that prison competition has brought wage levels in some places down to $2 or $3 per week and that the Compact is powerless to control this evil no matter how or by whom it may be administered. Finally, they insist that every article of commerce manufactured in a prison means one less such article manufactured by free labor. Therefore, with millions now unemployed, they say that society must choose between giving law-breakers an opportunity to work or giving a like opportunity to honest men and women. Asked if, as tax-payers, they are willing to support prisoners in idleness, they say rather that than impose additional idleness upon the innocent and add another hundred thousand to the ranks of the unemployed who also must be supported out of taxation.

However, these same witnesses abandon their pitiless logic when asked about the State Use System. Quite uniformly, they express approval of it and admit that upon grounds both of humanitarianism and of what they conceive to be sound economic doctrine, the State has a right to employ prison labor for the manufacture of products to be used by the State and its political subdivisions. They concede the penological

necessity of employing prisoners both for purposes of discipline in prison and for the processes of rehabilitation. But this is the sole concession that Labor makes. It declares war to the death on every other expedient.

THE TESTIMONY OF STAFF MEMBERS OF THE LEGAL AND OTHER DIVISIONS OF N. R. A.

These witnesses were very helpful to us in clearing away numerous points of difference relating to the proceedings leading to the preparation and adoption of the Compact and the authorization of the NRA label under the Compact. Especially in regard to the latter, it had been charged by the Cotton Garment Industry not merely that the label is misleading and deceptible but that it was authorized without notice and put into use surreptitiously. These witnesses detailed to us the official steps taken in these procedures and also told of various preliminary conferences between representatives of the interested groups. The importance of this testimony is reflected in our Finding III, (infra).

They insisted that the regulation of prison industry must be committed to its own Prison Labor Authority Administrator and that it would be unsound and impracticable to transfer this function to the several interested and competing Code Authorities and Administrators. But they conceded the desirability of developing a plan for the better co-ordination of these activities. They gave us convincing evidence of lack of co-operation and obstructive tactics on the part of the Cotton Garment Code Authority during the months that the Compact has been in existence.

THE TESTIMONY OF PROFESSOR LOUIS W. ROBINSON

Professor Robinson was the only witness whose testimony may be described as entirely objective. In theory, he favors the State Use System above all others; but he pointed out that in practice this system not only has failed to reduce idleness in prison but it many instances has increased it. This he attributes to several factors, viz:-

1. Most States that have adopted this plan passed imperfect laws. A State Use law, if it is to produce satisfactory results, must prescribe the compulsory purchase by State agencies, departments, institutions, counties, and municipalities of all classes of goods produced in the State's prisons that are required by such agencies. Massachusetts is pointed out as the State that has devised and adopted the best Statute.

2. He questions the sincerity of some of the proponents of this system. For example, individual members of a certain organization of manufacturers which is conducting an "educational campaign" for State Use are known to have tried, in States where the system is already established, to restrict the purchase of prison made goods to institutions for the housing of prisoners. Similarly, the representatives of given

industries use political pressure and like means to secure the exemption of their particular industry from the operation of the law. For example, in the State of New York, though the prisons are equipped to build furniture of all kinds, not a stick of school furniture is permitted to be made by prison labor. Certain labor organizations have been active in similar attempts to restrict the effective operation of the State Use System, in spite of the fact that Labor gives the system its unqualified indorcement when it is discussed as an abstraction.

3. If the State Use System is to become effective in reducing prison idleness, each State employing it must conduct a careful investigation by competent production engineers to determine the needs of the State and of its political subdivisions that can be supplied by the labor of prisoners. This must be followed by a thorough over-hauling of the State's setup of prison industry, always with an eye to the following requisites: -

a. The safe confinement of the prisoners.

b. The provision for them of real, productive work on full time, as measured by free industry in like fields.

c. The diversification of prison products to the greatest practicable degree, so that no one product will monopolize the market to the injury of outside industry and free labor.

d. The selection, to as great a degree as possible, of industries for prison labor that tend to fit the prisoner to make an honest living after his release,

Professor Robinson admits that this ideal has not been realized anywhere up to the present time. But he attributes this primarily to the factors outlined in subdivisions (1) and (2) above and not to any weakness inherent in the System.

FINDINGS OF THIS COMMITTEE

The foregoing analysis of the testimony explains our findings, which are:

I. The Prison Labor Compact has not solved the problem of prison labor and will not solve it permanently and constructively.

We arrive at this conclusion regretfully and with extreme reluctance. The Compact was conceived as a great forward step and was hailed by thoughtful observers as a major achievement. It aims to bring order out of chaos, to render justice to the men in prison without injuring industry and free labor out-side prison. It has failed for a number of reasons, some of which are so deeply rooted and as far-reaching in

their social and economic implications that no mere modification of the terms of the Compact, no improvement of the technique or its administration, will overcome them: e.g.-

a. The basic aims of labor are incompatible with the purposes the Compact.

b. The Cotton Garment Industry regards the Compact as unworkable; and it is unworkable without the co-operation of that Industry.

c. Other branches of Industry will come into similar conflict with the Compact if under it other prison products enter the channels of trade in sufficient volume to endanger such industries. They have a legitimate fear that the Compact and the use of the label in prison industries may tend to expand the market for prison made goods and in the long run increase rather than decrease the problems of competition.

II. The Prison Labor Compact is an indispensable part of any larger plan for the real solution of the problem of prison labor. But it must be regarded as an interim measure.

Though we find that the Compact has failed and must fail of achieving its final purpose, nevertheless it supplies the only practicable means of regulating prison industry temporarily while a comprehensive plan for the solution of the question is being worked out and put into operation. This will be elaborated in our Recommendations, infra.

III. The Compact was the product of a genuine desire to solve a hard problem. It has been administered fairly by persons of the highest integrity. Any past errors in its administration have been only such as are inevitable in the development of a new instrumentality.

This finding is more important than might be supposed. The Compact must be kept alive and must be supported by the hearty good-will of Prison Administration, of Industry, and of Labor; only its ultimate purpose and its duration must be modified. The success of any comprehensive plan will be endangered if the suspicions, fears, and charges of bad faith reflected in the testimony are allowed to persist. States of mind, especially when tinged by emotion or inflamed by passion, are the most stubborn facts of life. Success in this difficult enterprise will be possible only if the parties to the conflict resolve to work together in a spirit of mutual confidence.

IV. The only true solution of the prison labor problem is one that will effectually remove the products of prison labor from the ordinary channels of competitive trade and commerce. This means the State Use System.

Many of the reasons for this finding and the limitations upon its validity are set forth in our analysis of the testimony of Professor Louis N. Robinson, supra. It seems unnecessary to repeat them here.

We may add that though, under this system, goods made in prison do enter the field of use, and so compete with the products of free labor, this competition is made relatively innocuous because: -

a. Such goods are kept off the general market; hence they do not affect the price structure in any branch of industry.

b. The labor that goes into the production of such goods is not in direct competition with free labor; therefore prison labor cannot become an instrumentality for lowering of wages and the degradation of free labor.

V. <u>The present and potential competition of prison industry with the Cotton Garment Industry has created a special and acute problem that calls for immediate attention and relief.</u>

The testimony we have heard shows that the principal friction and the most irritating conflicts have arisen between the Prison Labor Authority and the Cotton Garment Code Authority. This is due neither to accident nor to merely personal differences.

The Cotton Garment Industry is badly over-expanded. This has been brought about in part through expectations aroused by the passage of the Hawes-Cooper Act. As a result, prison competition, even on its present reduced scale, actually endangers the life of the Cotton Garment Code. The withdrawal of that industry from its own Code would be a major disaster to labor, spelling a large increase of unemployment and a return to sweat-shop conditions that were a disgrace to American industry. This must be avoided at almost any cost.

Here, again, the importance of maintaining Prison Labor Authority as an interim and emergency agency becomes apparent. It is not for this committee to pass in detail upon the appropriate remedy for the immediate relief of that industry. But we assert that its effective relief is impossible unless, through the co-operation of Prison Labor Authority, under the Compact a simultaneous control is exercised over the competitive products of prison industry.

If the price of the rehabilitation of the Cotton Garment Industry should be a temporary increase of prison idleness and a temporary addition to the financial burden of the prisons, it would be a price worth paying - provided it is part of a comprehensive plan for the ultimate and realistic solution of the whole difficult problem of prison labor.

Our Committee believes that it has such a solution to offer. We have, in this letter of transmittal, attempted to point out some of the difficulties we faced when we undertook this investigation. At times it appeared that irresistible forces were opposed to immoveable obstacles, that we should have to throw up our hands and report that we saw no way out of the mess. In the above findings we have hinted

at our remedy. This will be stated definitely and fully explained in the body of our report.

Respectfully submitted,

Joseph N. Ulman, Chairman

Frank Tannenbaum

M. Jett Lauck

James P. Davis, Secretary.

REPORT AND RECOMMENDATIONS

The Committee's recommendations look to a definitive solution of the prison labor problem. No partial alleviation is practicable. The conflicts of opinion and interest between the contending groups are so sharp that no compromise of the issues at stake is feasible, and even if feasible would not be desirable. No such compromise would endure beyond the day on which it was affected, and in a new guise the old issues would persist in burdening the conscience of the community.

The specific issues that called this Committee into being were:

A. The difficulties in the Cotton Garment Industry created by prison competition, and

B. The complaints against the operations of the Prison Labor Compact.

A. The Cotton Garment Industry and Prison Competition

The conflict of interests between the Cotton Garment Industry and the prisons is acrimonious and of long standing. For many years penal institutions have emphasized the production of cotton garments under a contract system and have marketed their products at prices which outside shops found difficult to meet. Prison labor competition made the maintenance of any standards in the industry outside progressively difficult, and forced the manufacturer into out-of-the-way places where child labor, night work, long hours, and poor pay became the rule. It has been impossible in the past for the industry to acheive stability, to increase its wages, or to improve its standards, because of the lower costs of prison manufacture. The prison contractor had the advantages of free rent, light, and heat, of low labor costs, and of a controlled labor force - there is ample evidence in the history of prison contracting that the disciplinary machinery of the institutions was often used to inflict physical punishment upon the prisoner who failed to complete his allotted task. The prison contractor supplied work for the prisoners and in one way or another added emoluments tothe agents of the State who were participants in the execution of the prison labor contract. The system served the contractor and the prison administration. It was, however, in many instances a bane and a curse in the lives of the prisoners, and the low-priced products kept wages down and the standard of living below a decent level for the workers outside.

Against this system a ceaseless battle has been fought on the grounds that it perverted the prison to a factory for private profit, that it used the money of the tax payers and of the prison contractors' competitors to undermine and destroy their basis of income, that it led to political graft and malfeasance in office, and that it served no useful ends in the lives of the prisoners when released. This conflict has raged back and forth for well-nigh a century, with the prison labor contracting system gradually losing ground and being replaced by other systems of labor more or less pernicious. But in spite of its decline, the prison garment industry still made 22,000,000 shirts in 1932, was still operative in 22 states, and still represented the greatest single labor activity in the prisons of the country.

The impact of the depression upon the Cotton Garment Industry made the affects of prison labor competition more keenly felt than ever, while the development of the National Recovery Administration not only brought the issue to a head but established machinery to deal with it on a national scale. Earlier attempts to resolve this problem were obstructed by the fact that prisons are state institutions, and that each state has a different policy.

In some states the forces opposing prison competition achieved its abolition without supplying a satisfactory alternative for keeping prisoners at work. In others the efforts of labor, industry, and interested social organizations completely failed to make any headway against the combination of prison contractor and local petty politics. The struggle culminated finally in an attempt to secure congressional legislation.

The Hawes-Cooper Act, passed in 1929, prevented the sale of prison-made goods in states that had legislation prohibiting the marketing of such goods from their own institutions. The law was to become effective in five years, thus giving the states an opportunity to reorganize their prison industries to meet the prospective limitation imposed by the law. The five years expired at about the same time that the National Recovery Administration came into being. In the meantime, most of the states had neglected to make the necessary adjustments to meet the restrictions upon their ability to market their prison-made goods, with the result that their problems became more acute. The reasons why the states had not set about preparing to meet the prospective limitations in the Hawes-Cooper Act are inherent in the very fibre of the prison system itself, and need not be here discussed. The fact is that the states "just drifted," as was testified by one of the witnesses before the Committee.

This lack of preparation on the one hand and the coming into existence of the National Recovery Administration on the other brought the issues before the Federal Government as an immediate and inescapable conflict. The Cotton Garment Industry seemed at last to have found the instrumentality to secure its long-sought objective. It sought by one means or another to put prohibitory provisions into the industrial and retail codes to prevent themarketing of prison-made goods. It was going to achieve at one blow what fifty years of public agitation and striving had failed to secure.

The prisons, unprepared, and now being threatened with a virtually complete shut-down of the open market for their prison industries, were faced with a very real crisis; a sudden and large increase of idleness, destruction of their capital investment, demoralization of their system of prison discipline. They were faced with the complete and immediate destruction of the traditional system of penal administration which they had learned to operate by custom and which by a slow process of attrition had become more or less satisfactory to themselves. They had neither the insight, the time, the money, the experience, perhaps not even the desire to contrive an alternative way of governing the prisons. Institutions, no less than individuals, surrender their traditional ways slowly and grudgingly. Faced with genuine danger, they appealed to the Federal Administration for immediate relief.

It was to meet the danger inherent in the National Recovery Administration codes on the one hand and the failure of the state prisons to adapt their industries to the provisions of the Hawes-Cooper Act on the other that the Prison Labor Compact was developed.

The Compact, in brief, provides that the prison authorities set up conditions of fair competition in their prisons so as to meet the standards imposed by the codes on outside industry. The compromise as achieved was one that, for the moment, kept the penal institutions from shutting down their work shops and gave outside industry some measure of protection against the hitherto unrestricted and uncontrolled prices of prison competition.

The working of the Prison Compact has since its adoption been subject to a great deal of criticism, especially on the part of the Cotton Garment Industry. And in this industry the conditions are such as to make the complaint very real and the necessity for relief urgent.

The source of the grievances of the Cotton Garment Industry arise from the fact that

(1) The industry has unduly increased its outside plant and equipment. The new capital investment was mainly motivated by the prospect of the withdrawal of prison competition under the Hawes-Cooper Act. In addition, evidence indicates that there was some further plant increase in the Cotton Garment Industry because the prospective influence of the National Recovery Administration seemed to point to a complete shut-down of prison industries. That there was some basis for this assumption is seen in the temporary exemptions granted by the National Recovery Administration for the training of apprentices in the new plants being developed.

(2) The manufacturer of prison-made cotton garments was allowed a ten percent lower direct labor cost basis than out-side industry. This amounts to from two percent to three percent of the wholesale price of the merchandise.

(3) The prisons operating on the State Account System are allowed a price differential of 12½ cents per dozen, sufficient to provide a definite advantage in a sensitive market.

(4) Finally, the prison-made garment has been granted a National Recovery Administration label which is not easily distinguishable from the ordinary label used in that industry by outside plants. The granting of the label by the National Recovery Administration may have been legal, it may in fact have been inevitable after the adoption of the Prison Compact, but it gives prison industry a kind of moral advantage it has never before enjoyed.

Until the granting of the label, prison-made garments were always on the defensive, and their origin was frequently hidden by false labeling so as to deceive the consumer. A number of state laws were, in fact, passed to prevent this deception. This function now comes under the auspices of the National Recovery Administration, and the prison industry, as one warden expressed it, "has been recognized for the first time." The protest of the garment industry is both natural and logical. The label tends to undo the effect of a campaign that has raged in the press and the pulpit for well-nigh a century. It makes prison goods respectable. It gives them a market free from opposition and makes the consumer incapable of distinguishing between prison and non-prison made goods. There is no question that the label tends to deceive, and that the prison contractor has secured the help of the National Recovery Administration in carrying out this deception.

To argue that prison conditions have changed so as to destroy the basis of the onus is to raise questions on enforceability, questions of the rapidity with which social institutions change their character; and in effect it shifts the basis of the argument. It is clear that the attitude of the Government, as expressed through Congressional action and through the reports of commissions, has been that it is undesirable social policy to promote profit-making industries in penal institutions. The action of the National Recovery Administration in granting the label tends in effect to promote and encourage profit-making industries in prisons.

In the face of demand for increased wages, shorter hours, and improved standards for labor, competition with prison-made goods is made more difficult for the Cotton Garment Industry.

The position of the Committee is that the making of garments is from every point of view undesirable as a system of labor in the prisons; that it does not materially contribute to the ends of a penal sentence; that its effect upon the morale of the prison was in the past and in the future probably will continue to be unwholesome; that in view of the increase of outside plants and the changing standards enforced by the National Recovery Administration the continuance of prison competition is destructive of the Cotton Garment Industry and endangers the standards of life and labor for some 165,000 people; and that, as the prison industry is insistent that it can survive only upon the favoring feature of a cost and price differential and upon the contributory deception involving the Federal Government through the National Recovery Administration label, it is better immediately and finally to remove prison-made garments from the open market.

The Committee therefore proposes that the Federal Emergency Relief Administration temporarily purchase the garments made in the prisons. This temporary period should not last more than two years and should be on a declining scale in periods of three months during that time. This would give an opportunity to carry out the suggestions of the Committee in reorganizing the prison industries. It will also prevent the increase of the Federal relief rolls that must ensue if the competition of prison-made garments is allowed to continue to absorb the work that would otherwise go to increase the labor of people outside of prison. It would immediately remove the source of contention of the Cotton Garment Industry that it cannot continue to meet the provisions of the codes of fair competition set up under the National Recovery Administration and increase the possibility of standardizing an industry that has been the most sweated and the least influenced by the pressure for higher standards of life and labor for the workers engaged in it. It would also give the National Recovery Administration a real moral argument to push its insistence for higher standards and better enforcement in that industry. It would save the prisoners from idleness and the prisons from loss through a sudden destruction of an important part of their industrial system, and it would give time to plan and execute a different industrial system for the prisons looking toward the final abandonment of the Cotton Garment Industry as one of the chief occupational activities in penal institutions.

The second immediate issue that brought this Committee into being concerns the operation of the Prison Labor Compact. On the whole the situation is not so pressing as in the Cotton Garment Industry, for the other industries under the Company do not feel prison labor competition so keenly, and, excepting the Cordage and Twine Industry, where the problems are of a very special character, the prison industries are not so large nor is their pressure against outside industry so effective. There is, however, sufficient evidence before the Committee to show that the situation is serious enough to require remedial action, and that if such remedial action is delayed the problem will become more difficult and its ultimate solution less feasible.

The Prison Compact is, as has already been indicated, a voluntary arrangement between the States to maintain within the prisons standards of cost allocation to sales price that will make prison industries comparable to outside industries. General agreement upon costs is, however, always affected by traditional differentials in both costs and prices. Assuming the best possible enforcement, the prison would thus still have guaranteed to it a certain edge upon certain parts of the market because of these differentials. Enforcement of the Compact, in view of experience, would be difficult to carry out and dubious in effect. But even with the best possible enforcement, the fundamental issues are in the main not different from those in the case of the Cotton Garment Industry. The Compact still involves the NRA in securing and protecting a market for a type of industry that the sense of the American people as reflected by their representatives, at least, over a long period of time and under many different conditions, has attempted to outlaw on what are claimed to be broad grounds of social policy on the one hand and narrow grounds of economic policy on the other. The NRA and the prison Labor Compact have inadvertently reversed this trend of policy upon this issue, have tended to prolong the existence of the condemned type of prison industry, have in return for compliance with certain demands as to working conditions and prices opened to it the prospects of a more secure market than before, and would, if no change were made, impose upon the prisons continuance of the financial and profit consideration in the management of their industries, contrary to the expressed judgment of their critics.

There is the further specific grievance that the Prison Labor Authority has acted to change both cost and price schedules without consultation with the Code Authorities affected. Denials and recriminations one way or another do not seriously change the picture. Some remedial and corrective measures are essential even for the temporary period in which the Prison Labor Authority is to be accepted as an agency in the field, to meet the real danger that the Prison Labor Authority may, by developing interests and setting up expectancies, contribute to the freezing of the present prison industrial system, contrary to the repeatedly expressed policy of the American people as exemplified in the action of Congress and numerous State Legislatures.

The immediate remedial action suggested by the Committee is therefore to set a limit upon the expansion of the prison industries, by setting up quotas in the prisons to limit their production for the open market at a point no greater than the one existing when the Prison Compact was

established; and to provide that no changes in price or cost schedules be introduced in prison industries without mutual agreement between the Prison Labor Authority and the special Code Authority involved. If necessary, an impartial chairman might be set up whenever agreement is impossible.

The Program

But the prison labor problem is more pervasive than the above discussion would indicate. The prison industrial system is an integral part of the very structure of the penal institution and must of necessity shape the lives of the men and determine whether the effect of imprisonment is to achieve those ends that the community has a right to expect from the penal institution. If the prison for one reason or another does not return to the community men strengthened in character, cleansed of poor habits, better able to make social adjustments, if it does not reconstruct their way of life and make them less likely to follow the path of criminal depredations, then the prison system has failed. If the men in prison do not come out better fitted to take their places in the community as citizens, then all the efforts of society, all of its expenditures, of its manifold plans and programs for the combatting of crime break down at the point where the community has the greatest opportunity, the most time, and the best chance of achieving constructive ends with men who have failed in all other social relationships.

For the prison is the final opportunity of the community to undo the evil already done, and to retrieve both its own failures and the failures of the individuals involved. It is these considerations that have motivated the opposition to the essential perversion of the prison to a profit-making institituion. The true function of the prison is neither to make profit for private contractors nor to make profit for the state. At its best the function of the penal institution is an educational one -- education in the sense of re-creating a habit system adequate for social adjustment. To permit the profit motive to interfere with this broader purpose is to negate the function of the police and the judicial agencies, committed to the prevention of crime. The fact that so large a part of the men sent to prison continue in their career as criminals is evidence that the penal system now fails almost completely of these ends. This is not the place for a general essay on criminological reform. But it is the place to insist that no such reform is possible without an adequate prison industrial system; that no industrial system which subordinates the functions of the prison to the making of profit can meet the purposes of society; and that the present situation in regard to prison industry must change.

Surely no one will deny that prisoners ought to have work in prison. But it is no corollary to this statement to say that prison industries must be run for profit. In fact, the greater measure of the difficulties that have arisen is due to a willingness on the part of prison officials to shift to the shoulders of private contractors their burden of responsibility for contriving an adequate system.

The only alternative to a profit-motivated prison industry is the development of the State Use System. That has been recognized for a

long time, and a number of the states as well as the Federal Government, have abandoned the production of goods for the open market and have confined or law the manufacture of prison goods to the needs of the states. The difficulties that have arisen here are due mainly to two factors: first, an inadequate law; second, inadequately equipped and organized systems of prison industry. An adequate law requires that the public market--i.e., the market made by all tax-supported institutions--shall be reserved for the prison industries. An adequate prison industrial system is one that is sufficiently diversified and equipped to be able to produce the great variety of things that the tax-supported institutions need, and that by its diversity provides a limitation upon an undue concentration in any one industry, and makes possible the kind of administrative and educational classification of the prison population needed to achieve the broader ends of the prison. An adequate law requires compulsory purchase by all tax-supported institutions of the things that can be produced in the prison; in turn, the prison must have equipment and organization to meet the needs of the tax-supported institutions both as to quality and quantity.

The States Use Laws have been opposed for political reasons. The development of the state prison systems has been neglected because of inefficiency, political considerations, and lack of funds. The prison problem does not bulk large in the minds of the mass of people, and it has been allowed to drift without much consideration. We propose to solve the specific issues that brought this Committee into existence by making it possible for the states to develop a satisfactory industrial system if the states will cooperate to the extent of passing a satisfactory States Use Law. The law of the State of Massachusetts might well be considered as a model for such purposes. If the states will so cooperate, then we propose that the Federal Government, in consideration of the elimination of the difficult national problems which the competition of prison industries has created, shall cooperate by providing the engineering staff to survey, and the funds to organize, a satisfactory prison labor system for each state. At no time has the occasion been more appropriate nor the opportunity greater to do a constructive task in giving the American people the kind of penal system that a civilized community ought to have.

We propose that the Public Works Administration set aside, subject to such modification, if any is found legally necessary, in the provisions of Section 206 of Title II of the National Industrial Recovery Act, a fund of $50,000,000 to be applied to surveying and reorganizing the prison industries of the states of the country as they pass the requisite legislation. Working in cooperation with the Prison Compact Group, this fund would set up an engineering staff to go into the cooperating state and make a comprehensive survey of the market available in the tax-supported institutions of the state, counties, and municipalities. It would then survey the prison and plan the prison industries to meet those specific needs, with all the factors in the situation fully in view. The Public Works Administration would then, by contract with the prison, help set up and operate this system of prison industries for a period of five years and set it well on its feet before withdrawing. We make no suggestion as to the conditions that the Public Works Administration would itself make in providing the money. It already has

a basis in law and experience to determine its conditions of cooperation with the states.

Our insistence is that the requisites of an adequate law and a sufficient diversification be kept in view. We also insist that the new plan be operated under contract with the prison authorities and with their cooperation for a period of five years, which ought to be long enough to set the new model on a firm foundation in practice as well as in public opinion. The diversification is important because it would do two essential things. It would make possible the reducing of pressure upon any one industry to a minimum. It would make possible for the first time an adequately developed educational system in the prisons, and a genuine effort to make the prison experience something more than a resting period between one series of criminal depredations and another. With the help of the Public Works Administration a system of educational and occupational classifications could be worked out in each prison. The small shops could be adapted to their industrial as well as their educational utility, and we might get at last a system of penal administration that would become a constructive rather than a destructive influence in the lives of the men in prison and of society which has to determine how to provide for them. No such penal system could be operated for long without raising the questions of whether the experience of imprisonment is essential in all of the cases in which it is now imposed, and whether society could not achieve its own purposes in many instances by decreasing the number of individuals sent to prison. It seems logical to expect that the operations of such a system of penal administration as is here outlined would lead to a strengthening of the very useful agencies of probation and parole, thus alleviating the problem of prison industries by reducing the number of men sent to prison.

One of the legitimately proud boasts of the present administration is the abolition of child labor, which had so long been defended and maintained by a series of specious moral arguments and political chicanery. It seems to this Committee that in the possible contribution to a final settlement of the prison labor problems and in the reconstruction of the penal system which must be one of the results of such a solution, another step of perhaps no lesser significance would have been taken. The community as a whole would acclaim such a solution of the prison problem, as it has acclaimed the abolition of child labor. The Committee wishes to make it as clear and as impressive as possible that only by the doing of the larger thing can the narrower issues that called it into being solved.

Recommendation

1. The Committee recommends that the National Industrial Recovery Board use its good offices with the President to set up through the Public Works Administration a fund of $50,000,000 for the purpose of helping the states meet the conditions specified in this report, so as completely to replan and reorganize their prison industries, removing prison-made goods from the open market and finally bringing to an end the prison-labor controversy which has burdened American industrial and political life for so long a time.

2. The Committee recommends that in the interim between the present and the time when the reorganization of the prison industries can be effected by the use of the fund suggested above, the National Industrial Recovery Board use its good offices through the President and the Federal Emergency Relief Administration to effect the purchase from the prisons of prison-made garments, or to utilize the labor now employed on prison-made garments to make such other garments as the Federal Emergency Relief Administration may deem preferable. The purchase of these garments by the Federal Emergency Relief Administration from the state prisons should be scheduled on a declining scale, and should cease at the end of two years.

3. In addition to the immediate adoption of the above program, the Committee further recommends that prison-made garments be barred in the public market by the withdrawal of the National Recovery Administration label now attached to them, or by its modification to read "prison made". The Committee suggests that a maximum of 15 days after the publication of this report be allowed to elapse before the above proposal for the taking over of prison-made garments by the Federal Emergency Relief Administration be effected.

4. The Committee recommends that the Prison Labor Authority be continued, and that its offices be used as the agency in cooperation with which the above program is to be carried out, and that the loss in funds to the Prison Labor Authority which may result from the withdrawal of the label or its modification be supplied from the funds set aside by the Public Works Administration.

5. The Committee recommends that an Executive Order empower the National Industrial Recovery Board to require an agreement between the Prison Labor Authority and the Code Authorities in the industries affected by prison-made products in every instance of change in price or costs of products sold by the prison industries. If such an agreement cannot be had by mutual consultation, an impartial chairman especially designated for that purpose should be named.

6. The Committee recommends that, by cooperation between the National Industrial Recovery Board, the Prison Labor Authority, and the Code Authorities affected, a quota system be established for all prison industries, limiting their production for the open market at a point no greater than that which existed at the time the Prison Compact came into existence.

7. The Committee recommends that if the above conditions be fully met then the remaining state, county, and city institutions now producing for the open market be brought under the Prison Compact.

Joseph N. Ulman, Chairman

Frank Tannenbaum.

James P. Davis, Secretary

W. Jett Lauck.

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APPENDIX E

NATIONAL RECOVERY ADMINISTRATION

FOR RELEASE THURSDAY MORNING, NOVEMBER 29, 1934. RELEASE NO.9029

REPLANNING OF PRISON INDUSTRIES IN STATES TO REMOVE PRODUCTS FROM OPEN MARKET RECOMMENDED TO NATIONAL INDUSTRIAL RECOVERY BOARD

A recommendation for complete replanning of the prison industries of the states which will remove prison-made goods from the open market and end the longdrawn controversy on the subject was made to the National Industrial Recovery Board today by a special investigating committee. Use of $50,000,000 Public Works funds for the purpose was advocated.

This group was created under an executive order issued by President Roosevelt October 12 to investigate effects of competition between prison labor and sheltered workshop products on the one hand and those of the cotton garment industry on the other, and also on the operation of NRA's prison labor compact.

The report has not been acted upon by the Board as yet. It was required as part of the arrangement under which the President, following extended investigation, required a shortening of the work hours in the cotton garment industry from 40 to 36, effective December 1.

The committee, composed of Judge Joseph N. Ulman of Baltimore, chairman; Frank Tannenbaum, author and economist, and W. Jett Lauck, statistician, found that the Prison Labor compact "has not solved the problem of prison labor and will not solve it permanently and constructively," but "is an indispensable plan for the real solution of the problem of prison labor."

The compact is an agreement between more than a score of states operating prison factories and the NRA for production of goods on a basis that should not put them on the market at a price lower than the products of private industry. The prison goods are given a distinct NRA label.

The committee urged that until such time as the system it suggested is brought about, the Recovery Board "use its good offices through the President and the Federal Emergency Relief Administration to effect the purchase from the prisons of prison-made garments, or to utilize the labor now employed or prison-made garments to make such other garments as the Federal Emergency Relief Administration may deem preferable."

"The purchase of these garments by the FERA from the state prisons" it continued, "should be scheduled on a declining scale, and should

cease at the end of two years".

The committee also recommended that prison made garments be barred in the public market by withdrawal of the NRA label now used or by its modification to read "prison made." Lapse of a 15-day period after publication of the report was recommended before FERA should take over prison-made clothing.

Another point was that the Prison Labor authority should be continued and used as the agency to centralize the proposed program, and that NRA be empowered by executive order to require an agreement between the prison labor authority and the various code authorities in every instance that prison industries make a change in price. Arbitration was provided for in case of non-agreement.

A quota system limiting prison production for the open market to the volume of output at the time the prison compact came into existence was advocated, and that all state, county and city institutions now outside the compact be brought into the new program.

"The only true solution of the prison labor problem," said the committee in the section of the report devoted to findings, "is one that will effectually remove the products of prison labor from the ordinary channels of competitive trade and commerce. This means the state use system.***

"The present and potential competition of prison industry with the Cotton Garment industry has created a special and acute problem that calls for immediate attention and relief.

"The testimony we have heard shows that the principal friction and the most irritating conflicts have arisen between the Prison Labor Authority and the Cotton Garment Code authority. This is due neither to accident nor to merely personal differences."

The committee blamed this condition on over expansion of the cotton garment industry, partially caused by expectations that the Hawes-Cooper act would greatly curb prison output.

Declaring that prison competition even as now reduced "actually endangers the life of the Cotton Garment Code," the committee said:

"The withdrawal of that industry from its own Code would be a major disaster to labor, spelling a large increase of unemployment and a return to sweatshop conditions that were a disgrace to American industry. This must be avoided at almost any cost."

Temporary increase of prison idleness and a higher cost of prison operation was described as "a price worth paying" to for rehabilitation of the cotton garment industry, so long as the higher costs become part of a comprehensive plan for ultimate, realistic solution of the whole prison labor problem.

No compromise, is held, "would endure beyond the day on which it was effected," and "no partial alleviation is practicable. The conflicts of opinion and interest between the contending groups are so sharp that no compromise of the issues at stake is feasible, and even if feasible would not be desirable."

The committee spent a month hearing testimony and reviewing material from an enormous list of witnesses, representing industry, organized labor and the prisons.

APPENDIX F

NATIONAL RECOVERY ADMINISTRATION

IMMEDIATE RELEASE RELEASE NO. 9078
Dec. 3, 1934

The National Industrial Recovery Board today designated its chairman, S. Clay Williams and Sidney Hillman, member, and Linton Collins, division administrator to conduct negotiations with FERA to see if the latter can utilize prison labor garment production in the relief program, so as to remove prison-made clothing from the open market.

This was in pursuance to the recently published report on prison labor competition made by a special committee under Presidential executive order, in connection with the shortening of the work week in the cotton garment industry.

The committee reported prison production was endangering the status of this industry and the wages of its 185,000 employes.

The board put off until it can gather more data and legal and other opinions, the committees proposal for a $50,000,000 PWA program of reconstructing the penal systems of the states so as to take the prison factories finally out of competition with private industry while furnishing maximum labor and training to prisoners by having them produce goods for state purposes only.

It also deferred, pending further reports, action, on the proposal that the NRA label now used by prison plants under the prison labor compact be taken away or be made to carry the words "prison made."

Mr. Collins, who has administrative charge of the prison compact and other public-agency agreements of NRA, was requested to find out the possibilities of limiting all prison production by a quota system based on the output of prison factories at the time the prison compact was put into effect.

APPENDIX G

COMMENTS OF THE PRISON LABOR AUTHORITY ON THE REPORT OF THE ULMAN COMMITTEE

The report of the Committee (*) appointed by the National Industrial Recovery Board to investigate competition of the products of the Cotton Garment Industry with the products of Prison Labor, as directed by Executive Order No. 118-155, has been the subject of a thorough discussion by the representatives of the States Signatory to the Prison Labor Compact of Fair Competition and has also been given earnest consideration by the members of the Prison Labor Authority. It was the judgment of all of those who examined the report that it was prepared by able and thoughtful men and merits the most serious and careful attention.

The Ulman report evidences the profound interest of the members of the committee is penological questions and we commend the idealism and the progressive viewpoint on penal problems expressed in it. Thorough recognition is given by the Committee to the need of making imprisonment a constructive measure for the rehabilitation of those confined. We agree whole-heartedly and, therefore, wish to re-emphasize the statement of the Committee that "Surely no one will deny that prisoners ought to have work."(Page 18). We hope that this principle will be accepted and given full recognition by all who must pass judgment on this subject.

INQUIRY CURTAILED BY TIME LIMITATION

However, it seems regrettable that the Ulman Committee was so limited in time to complete and report upon the subject assigned to it because, in our opinion, it seems to have been unable to give full consideration to all of the intricate questions involved. The speed with which the report was drafted probably accounts for the fact that the Committee's recommendations and the solution it has proposed seem to push aside many difficulties which to us appear to be substantial. It also seems unfortunate that the Committee occasionally has used language not justified by any testimony in the record, and sometimes not in strict accord with the facts. For instance, prison administrators are accused of lacking insight, time, money, experience, and even the desire to contrive an alternative way of governing the prisons. (Page 14). This accusation, levelled against these public officials, is predicated upon the assumption that they failed to prepare for the conditions alleged to flow from the enactment of the Hawes-Cooper Act. Examination of the reports of the majority of the prisons of the country would indicate that a very large proportion of the prison administrators were fully aware of the need for a reconsideration of their prison labor policies. In many instances, they have been unable to secure the legislative support or appropriations to enable them to effectuate new policies. Moreover, the Committee's interpretation of the Hawes-Cooper Act does not appear to be in accordance with the intention of the Authors of this legislation or in conformity with its plain terms.

(*)"The Committee" referred to throughout this report is the Committee consisting of Judge Joseph N. Ulman, W. Jett Lauch and Frank Tennenbaum.

MISINTERPRETATION OF HAWES-COOPER ACT

Prison administrators did not fail to adapt prison industries to the provisions of the Hawes-Cooper Act for the simple reason that the Act itself declared no affirmative policy respecting the sale of prison goods. This act merely divested such goods of their interstate character. It left each state free to choose its own method of determining whether the sale of prison products should be regulated or prohibited. It permitted each state to apply to prison goods shipped into it the same rules prescribed for prison goods made and sold in that state. Each state must determine what employment would be provided for its prisoners. The fact that some states have passed no new legislation on this subject does not mean that these have failed to carry out any affirmative duty placed upon them by the Federal statute. The Hawes-Cooper Act per se is not mandatory. Its provisions become operative within any state only through the legislation of that state. Legislative silence by any state means nothing more or less than that such state believes no new policy or law would be an improvement over its existing policy.

OPPOSITION TO PRISON LABOR

We also must reject the philosophy, which seems to underlie the report, that somehow prison-made merchandise is inherently vicious and injurious to the public welfare. The report seems to hold that there is no possibility of so regulating the sale of prison products in the open market so that such products can be made acceptable articles of commerce. Such a philosophy not only fails to be in accord with a number of court decisions, but would also seem to make impossible a constructive answer to the prison labor question. This is unthinkable. Some way out of the dilemma must be found.

We admit the Committee has given ample evidence of the existence of strong opposition to the sale of prison made goods in the open market. This is no new phenomenon. Most of this opposition is based on tradition and springs from abuses which formerly characterized the production and marketing of goods produced by convict labor. We understand the concern currently felt by free labor and industry and we realize that the depression has strengthened opposition to any unfair method of competion. At a time when law-abiding citizens are compelled to forego employment, it is natural that the cry against prison labor and the sale of prison goods on the open market should be intensified. But the prison executives assert that not one scintilla of real evidence was produced before this Committee to show that goods made under the Compact were competing unfairly.

PRISON WORK SOCIALLY IMPERATIVE

The present unemployment condition should be looked upon from a broad social view. Our concern must include not only free labor, but the labor of prisoners. Idleness as a factor contributing to social deterioration of the individual is intensified when the liberty of the individual to move freely is denied. Labor in prison is primarily therapeutic. Its objective is not financial gain and while its results incidentally contribute to the reduction of the price which taxpayers must pay for the upkeep of prisons, its greatest value is as an instrumentality through which prisoners may be rehabilitated. Broad social economy

demands productive labor for prisoners. Failure to provide such is a failure of the state to function adequately in the discharge of one of its duties to itself and to our whole social organization. With the exception of Minnesota, there is not a single prison in the country which really has productive employment opportunities in industrial pursuits for more than forty per cent of its population. Most American prisons today are vast idle houses in which criminals, aimlessly milling about, create a situation which, from the point of view of the prison administrator, is fraught with serious consequences, and, from the point of view of the average citizen is full of social danger. Such idleness renders it impossible to give effect to the progressive penal philosophy expressed in the Ulman report. Certain it is that the country's general unemployment problem cannot be solved by throwing all prisoners out of work.

PRISON EXECUTIVES INITIATE ACTION

Obviously, the situation demands constructive action. That the prison administrators themselves have realized this is evidenced by the fact that they did not sit idly by and allow the depression conditions to overwhelm them. They did not challenge the right of the Federal Government to interfere with the rights of sovereign states by code provisions which would curtail the effectiveness of legal instrumentalities of the states for the treatment of law offenders. They freely offered to cooperate with the Recovery Administration. For the first time in the history of the country, the states on their own initiative cooperated in the development of a plan to meet the issues of competition inherent in the marketing of prison labor products. Prison administrators did not wait for the economy charting by Congress. Early in 1933, when it was suggested that action would be considered looking toward an effort at "planned economy", representative prison administrators met in New York and discussed the menace to prison management and discipline in certain proposed legislation emanating from a self-constituted committee. This meeting and others that followed in May and July developed and agreed upon four basic principles for the conduct of prison industries.

HOW THE COMPACT WAS FORMED

Shortly after the establishment of the N.R.A. early in July, 1933, these principles were submitted to the Department of Labor and to the N.R.A. representatives of the prison administrators contacted the N.R.A. with the suggestion that a separate code to govern prison industries should be adopted. Without committing themselves, the N.R.A. officials encouraged this proposal. To make sure that the states would have knowledge of all that was involved in such a proposal, these administrators called a general meeting of representatives selected by the governor of each state. Upon one week's notice representatives from 32 states met in Washington. They decided to present a code. Such a code subscribed to by 36 states was presented to the N.R.A. After consideration, the N.R.A. determined it was impracticable because the N.R.A. was without power to enforce a code upon sovereign states.

Prison administrators then proposed that the states by agreement among themselves should do what was proposed to be done under the code which had been submitted. Accordingly, a compact was agreed to by the

states and submitted to the N.R.A. Following consideration by its legal branch and by several of its boards, certain verbal changes in the proposed compact were made. In this new form it was again submitted to the states and was agreed to by the signatory states, 30 in number. When in final form, it was submitted to and was approved by the President.

This is an elightening and an important record. It is documented completely in the records of the meetings of prison administrators, of the representatives of the states and in the files of the department of the United States Government and of the several states consulted and concerned in its consummation. This record is set forth in some detail here, as we believe such elucidation necessary at this time, not only because the Ulman report seems to have accepted as fact some unfounded statements as to the attitudes of prison administrators of the states, but also for the reason that the Ulman report is such a significant document that those who are to consider it as a basis for action by state and national agencies should have all the facts necessary to a complete understanding of the matters covered in that report.

The Ulman Committee found that the Compact was the product of a genuine desire to solve a difficult problem and urged its continuance. The Committee also found that the prison executives had made earnest efforts to cooperate with other code authorities. only to be met by rebuffs and arbitrary attitudes. But despite these set-backs, it is our opinion that the states will continue to seek a constructive solution and, therefore, we welcome the suggestions of the Ulman Committee.

DIFFICULTIES INHERENT IN STATE-USE SYSTEM

Subject to certain understandings and interpretations, the state-use system of prison employment should be a constructive method of solving the prison employment problem for the reasons so ably stated in the report of the Ulman Committee. and its adoption should be facilitated greatly because labor and industry seem more willing to cooperate upon this, than upon any other compromise.

But, the state-use system is not a universal panacea. We believe that the Ulman Committee has failed to consider sufficiently the difficulties inherent in any efforts to make this plan workable and practicable.

First of all, we believe that the Committee's definition of the state-use system should be widened. It would appear from the report that the Committee regards the state-use system of prison labor as one under which prisoners are engaged solely in the production of manufactured goods.

We regard the state-use system as one under which prisoners may engage in any type of work paid for by public monies. We would include within the definition the state-use such labor as that expended on public roads and other types of public construction, agriculture, mining, soil erosion projects, reforestation, flood control and similar projects, as well as the manufacture of articles for consumption by public institutions and tax supported activities.

Another problem which we fear the Committee has neglected to consider fully is the attitude of the political subdivision of the state with regard to purchasing products from state-operated institutions. It must be remembered that since the beginning of democratic government in America, local governmental entities have been jealous of their rights and have sharply limited grants of power to states and to Federal Governmental bodies. In the United States, local governmental unites are particularly insistent upon the administration and the control they exercise over purely local expenditures and the procurement of articles for local use. It has been, and is, no easy matter to overturn laws and customs grounded in generations of experience. This is a fundamental reason why the state-use system of prison employment never has been wholly successful in any state, although it has been tried by some states for over half a century.

PUBLIC OPINION AND OTHER STATE FACTORS TO CONSIDER

Another difficulty in providing an effective state-use system arises from the diverse economic and social conditions prevailing in the different states. Predominantly agricultural states present problems quite different from those found in the more highly industrialized sections of the country. It is also of the utmost importance to take into consideration the public opinion of the state citizenry with respect to the various phases of the prison labor problem. In some instances, for example, a prison labor program including the sale of prison products on the open market has been approved by a vast majority of citizens of a state because they sought a means to frustrate monopolistic or other conditions which they felt were inimical to the welfare of their state. In other localities, various interest groups within the state have been so strong that they have been able to prevent the establishment of certain kinds of prison industries even though the products were to be sold only to state institutions and agencies.

That these difficulties cannot be brushed aside is apparent when it is realized that none of the many states that have tried this system have taken full advantage of its opportunities. Pressure groups in many of the states have been so successful in exempting certain industries from the provisions of the state-use law that prison administrators have been deprived of the possibility of utilizing the prisoners in the manufacture of goods of certain types for state-use. In the opinion of the Prison Labor Authority, there is not a single state in the Union which has been successful in operating the state-use system satisfactorily. It is true that some of the states committed to a state-use system have provided a modicum of employment for their prisoners and may be in a better position in this respect than other states who have refused to abandon the sale of prison-made goods on the open market, but nowhere has it really solved the problem.

THERE MUST BE EVIDENCE OF GOOD FAITH

This brings us to the most persistent obstacle to the adoption of the Ulman report by representatives of the states signatory to the Compact. They feel that they have compromised to the utmost and that now they can make no further concessions because the agreements they have heretofore

entered into have been repudiated and undermined by interest groups. The compact itself was a compromise on the part of the prison men and they believe that honest and sincere attempts to live up to its provisions have been frustrated by a minority industrial group which has shown complete inability and unwillingness to cooperate with the National Recovery Administration on this or any other problem. If the National Recovery Administration could, for example, secure the adoption of a clause in industrial codes of fair competition which would assure the prisons that their state-use markets would not be infringed upon, or in some other way evidence the good faith of labor upon, or in some other way evidence the good faith of labor and industry to preserve state markets for the prisons, there would be little difficulty in getting the adoption of the principle of the state-use system wherever such system could function practically as soon as the funds necessary to equip the prison industries were available. In a broad sense, it would become effective in practically every state in the Union. Some device, such as that just suggested, must be found that will give added support to the compulsory purchase clauses which now appear in the laws of only a few of the states and which must be part of every state-use law, for otherwise it may be impossible to secure the condition which the Ulmer Committee Report (Page 18) properly recognizes, viz: that "An adequate law requires that the public market, i.e., the market made by all tax-supported institutions, shall be reserved for the prison industries."

ACTION SHOULD BE PREDICATED ON A COMPLETE SURVEY

We are of the opinion that the difficulties inherent in the state-use system are so perplexing and pervasive that it is impossible to put the recommendation of the committee in this respect into effect in a hurried fashion. Because each state has its own peculiar problems we firmly believe that prior to any attempt to carry out the recommendations of the Committee there should be a full factual research conducted which will permit the formulation of a law and the establishment of a system which is adapted to the conditions in each state. There is obvious need for surveys to be made by competent, trained persons cooperating with the respective state administrations, for the purpose of determining and evaluating all of the conditions which must be considered in the formulation of an adequate prison labor program. When such a survey has been completed in any particular state, a prison employment law may then be drafted which will embody so far as it is possible the state-use feature. This problem which has baffled broadminded men ever since imprisonment as a form of punishment was introduced, cannot be settled hurriedly or by the fiat of some organization of the central government. Not one law governing prison labor in all states should be drafted, but an indefinite number of laws, suited to the conditions of specific states. Should the National Industrial Recovery Board decide to encourage or foster these surveys, which we believe absolutely essential, it would be desirable of course to begin work in those states which today are the foci of the difficulty. Pending these surveys the Recovery Administration ought not, it seems to us, attempt, to exercise authority over prison industries as such action would be of doubtful legality.

We infer from the Committee's conclusions recommending the removal of prison-made goods from the open market within a period of two years that they assume adequate state legislation can be secured within this period. The Committee has evidently failed to take into consideration that all but a few of the states of the Union will meet in legislative session early in 1935 and that all but four or five of these states will not meet again until early in 1937, unless extraordinary sessions are called. Fewer than ten states will meet in regular session in 1936. Consequently, any state-use law passed upon adequate research in each state cannot possibly be drafted in time for the 1935 legislatures.

SUGGESTIONS OF THE PRISON LABOR
AUTHORITY RE RECOMMENDATIONS OF ULMAN COMMITTEE

It is not, however, impossible for the Recovery Administration to cope with this problem, and bring about an improvement in the existing situation. Many of the recommendations contained in the report might well be adopted.

RECOMMENDATION NO. 1

The Committee recommended (1) "that the National Industrial Recovery Board use its good offices with the President to set up through the Public Works Administration a fund of $50,000,000 for the purpose of helping the states to meet the conditions specified in this report, so as completely to replan and reorganize their prison industries, removing prison-made goods from the open market and finally bringing to an end the prison labor controversy which has burdened America's industrial and political life for so long a time."

"We have attempted to make clear the difficulties facing the general introduction of exclusive state-use laws and to point out the type of inquiry and the length of time which it would take to introduce legislation which so far as practical would embody the recommendations of the Committee. It is obvious that the surveys recommended would prove costly and that there will be need for funds to carry on this work.

We therefore, would favor any plan which would permit the allocation of Federal funds for the purpose of making the necessary preliminary studies and to draft the appropriate legislation for the consideration of the respective state legislatures. Furthermore, the financial conditions of a large number of states would undoubtedly make necessary Federal support in order to put into operation some of the laws which might be enacted and many states would undoubtedly welcome such support although we are without information at this time upon which to base an estimate of the amount which would be necessary for that purpose.

At a meeting of representatives of 28 states called to consider these recommendations, not a single voice favored the immediate adoption of an exclusive state-use system. However, these men and women were unanimous in their willingness to begin the installation of state-use industries or to improve existing ones with Federal aid. None was willing to give up the means they have of keeping prisoners employed until something had actually been developed to take its place. On the other hand

as one representative expressed it, most of them were willing to turn over one group of inmates after another to an experiment in state-use just as fast as industries could be established and proved successful.. By such a program state-use might develop in any state to such a degree that it will be safe to discard all other systems. This plan was followed in Massachusetts from 1920 to 1934.

An informal inquiry at the PWA discloses that there is not now $50,000,000 available and unalloted from the funds at their disposal. Since it will be desirable to proceed with preliminary surveys in the several states immediately and develop a program for each state, we believe funds sufficient for such surveys could more likely be obtained. As each survey indicated the amount of money needed to establish state-use industries, additional funds could be assigned. We estimate that not less that $1,000,000 would be essential at the beginning.

We doubt the wisdom of establishing such a program under the PWA. The states will need every assurance that the work to be done will be undertaken by men experienced in prison work as well as in industry. We believe that either the Prison Labor Authority should be incorporated as a Federal Corporation under Title I of the NIRA, to carry out the state-use program to be adopted or that a separate corporation should be created for this purpose. In suggesting that the PLA be used to effectuate the purposes of this program, we are not aiming to perpetuate that organization. If a corporation, the directors of which shall be different than those of the PLA, is formed, it should adequately represent the public, free industry, free labor, and the prisons. In either case we believe it essential that the agency to carry out the purposes of this program has the confidence of prison administrators in the states and be representative of them.

While attention would naturally be paid first to these states where the problem of competition is most acute, we believe that states, like Connecticut and Nebraska, which are not now selling on the open market but are in need of an adequate prison industry program should be encouraged to avail themselves of this aid. Hence, all states now having, or which later adopt, an adequate state-use program should be included under the provisions of the plan.

It is important to define what constitutes an"adequate state-use law. In discussing this phase of the problem, prison men were emphatic in their declaration that it must include all tax-supported institutions and agencies; that it must contain a so-called compulsory purchase clause requiring all such institutions and agencies to buy from prison industries wherever possible unless released from so doing by a properly designated authority; that public works and ways including highways and perhaps even tax-supported relief agencies should be included under state-use, although it is not likely that prisons would avail themselves to any great extent of these outlets for obvious reason; and finally, that no adequate state-use law should exempt any industry from being established in any prison.

Finally, the representatives of the states would be opposed to any Federal grant the conditions of which would impose upon them either a program or a personnel with which they were not in agreement

or which was outside their control. The states will accept any reasonable conditions provided they are consistent with local needs and statutes. Unquestionably they will grant any Federal agency the right to inspect audit, or recommend, but they do not wish unnecessary and impeding restrictions.

RECOMMENDATION NO. 2

"The Committee recommends (2) that in the interim between the present and the time when the reorganization of the prison industries can be effected by the use of the funds suggested above, the National Industrial Recovery Board use its good offices throughtthe President and the Federal Emergency Relief Administiation to effect the purchase from the prisons of prison-made garments, or to utilize the labor now employed on prison-made garments as the Federal Emergency Relief Administration may deem preferable. The purchase of these garments by the Federal Emergency Relief Administration from the state prisons should be scheduled on a declining scale, and should cease at the end of two years."

This recommendation can only be considered in the light of the facts of the situation. Cotton garments are now being manufactured in twelve prison factories - seven of which are operated under the contract system, three under a modified state-account system similar to the "cut-make-and-trim" system of free industry, and only two are operated on an out-and-out-state-account system. In addition to those we must consider the potential production of such states as Nebraska, Kentucky, Connecticut, and possibly others with garment factories now closed down but which may reopen and produce for sale on the open market.

The rate of production of the twelve prison factories operating at the present time is approximately 1200 dozen shirts and 1500 dozen pants per day. The stock on hand probably does not exceed 1,000,000 garments all together. We questions the expediency of requesting the FERA to purchase garments in such quantities from these prison factories.

It is unlikely that any of the prisons operating under contract will give up their contracts and go into State-account operation even if the FERA were to guarantee to take their entire output for any specified time. Some could not do so because they do not own the equipment and such changes would require an outlay of capital which they do not possess. Others could not change the system without legislative sanction. For the FERA to purchase from the contractors would only aggravate the present problem.

On the other hand if an offer is made to purchase all garments produced under state control and the Compact label is withdrawn simultaneously, a reaction so disastrous would ensue as to nullify any constructive results which might come from the report of the Committee. We believe it is essential to consider this recommendation in its relation to the development of the whole state-use program and the limitation on sales of prison-made goods on the open market proposed under

the Committee's recommendation No. 6 below. After such limitations have been agreed upon, the FERA can then decide what portion of such goods they might be willing to absorb and the prisons will welcome their cooperation.

In other words we doubt the expediency of asking the FERA to purchase for relief or state-use, cotton garments made under the prison contract system, especially if such garments could be made by employable people now idle under the FERA work relief program. It may be that the prisons should be allowed to produce under state-use not only cotton garments but other products for the unemployable just as they do for the insane, and other people under the care of the state. Such production should not be limited to any period of time or to any specified amount.

RECOMMENDATION NO. 3

"In addition to the immediate adoption of the above program, the Committee further recommends (3) that prison-made garments be barred in the public market by the withdrawal of the National Recovery Administration label now attached to them, or by its modification to read 'prison made'".

After a state-use market for prison-made goods has developed to a point which would enable the withdrawal of all prison products from the open market, as we believe to be the intent of this recommendation, we would see no need for a continuance of the prison compact label or its modification. We do deem it necessary, however, to maintain the present label for goods which cannot immediately be absorbed by tax-supported agencies. We believe the issuance of labels to any state might well be contingent on the acceptance by that state of a limitation on the sale of prison products on the open market as suggested under the Committee's recommendation No. 6.

In view of the foregoing, we do not need to comment upon the suggestion that "a maximum of fifteen days after the publication of this report be allowed to elapse before the above proposal for the taking over of prison-made garments by the Federal Emergency Relief Administration be effected."

RECOMMENDATION NO. 4

"The Committee recommends (4) that the Prison Labor Authority be continued and that its offices be used as an agency in cooperation with which the above program is to be carried out and that loss in funds to the Prison Labor Authority which may be the result of the withdrawal of the label or its modification, be supplied from the funds set aside by the Public Works Administration."

The Prison Labor Authority is anxious to cooperate in every way with the National Industrial Recovery Board to carry out any program which is practical and which will put into effect the penal philosophy expressed in the Committee's report, namely, that each prison shall have labor adequate for rehabilitative purposes. Undoubtedly there will be a continually increasing loss in funds to the Authority due to the limitations placed on the sale of prison products in the open market and the development of state-use. In time the Authority probably would be unable to function satisfactorily without securing some additional financial support. In this

connection we wish to point out that the Prison Labor Compact gives to the Authority no jurisdiction over goods produced for state-use and that unless the Compact be modified and the modification generally adopted by all the states, the power of the Authority to cooperate with the program outlined will remain definitely restricted. Unless the PLA becomes the agency to carry out the suggested program as well as its present functions, or unless the suggested Corporation should receive from the signatory states the power and duties of the PLA under the Compact, it will be necessary for the PLA to secure from the states jurisdiction over prison products made for state-use and authority to levy assessments on them for its support. Such authority can come only from the states signatory to the Compact.

RECOMMENDATION NO. 5

The recommendation (5) that the agreement of the Code Authority affected shall be secured by the PLA "in every instance of change in price or costs of products sold by prison industries" is neither practicable nor just. The policy followed by the PLA in determining such price authorizations has been approved by the NRA and full information has been filed with the Code Authority affected and opportunity given to the Code Authority to protest or appeal; therefore the recommendation appears to be wholly unnecessary. In addition the burden imposed upon the PLA in securing an agreement as to price changes in every instance would prove so cumbersome as to defeat the need for action. Such changes often cannot wait on the calling of joint conferences and the reaching of agreements, especially where the conflict of interests is so strong. Sales are made or lost often in the space of a few hours. No industry could function under such an arrangement. The suggestion that an impartial chairman be especially designated to arbitrate disputes as to price changes is already provided by Section V of the Compact which authorizes the President or his representative to review any decision of the Prison Labor Authority. Until the remedies provided by the Compact are availed of and experience demonstrates these to be inadequate we cannot admit that the system now provided needs modification.

RECOMMENDATION NO. 6

The Committee recommended (6) "that, by cooperation between the National Industrial Recovery Board, the Prison Labor Authority, and the Code Authorities affected, a quota system by established for all prison industries limiting their production for the open market at a point no greater than that which existed at the time the Prison Compact came into existence".

Most prison men will agree to a limitation of their sales on the open market provided other means are provided of caring for their idle prisoners. Indeed the acceptance of such limitation might be a condition of the grant made to set up state-use industries with the aid of Federal funds. Provision for limitation of output of prison industries "in fair proportion to the industry affected" and prohibition of "the expansion of any existing prison industry which bears a disproportionate share of competition" are provided for in the Compact. The PLA has approved such action and appointed a committee to assist in working out this policy. They have offered to meet in joint conference with the Cotton Garment Code Authority to discuss the application of this principle to the cotton garment industry. They

have discussed it with the Binder Twine Agency of the Binder Twine and Cordage Code Authority. In fact approval of reasonable limitations in both these industries was expressed by the representatives of the states affected at the recent meeting of the Association of States Signatory.

Naturally such limitations will necessarily be based on a separation of intra-state and interstate markets and conform to local statutes and conditions in each state. The suggestion of the Committee that "production for the open market (be established) at a point no greater than that which existed at the time the Prison Compact came into existence", may be used as a point of reference, but such quotas must necessarily depend on the constantly changing state of the free market as well as on other factors already mentioned. What may be proper in 1934 might be unwise in 1935, or again the production of hosiery for sale on the open market in April, 1934, might be a satisfactory limit for the industry but the production of binder twine at that time might be unsatisfactory to the cordage industry. Each quota must be worked out in the light of the needs of its own industry and the states affected.

The Committee has expressed the hope that their recommendations "might get at last a system of penal administration that would become a constructive rather than a destructive influence in the lives of men in prison". We might further this aim and provide for idle prisoners if the FERA would establish for unemployed doctors, dentists, nurses, teachers, occupational therapists, case-workers, psychologists, welfare workers, recreation directors, and parole officers "work projects" in prisons cooperating under the proposed program. Such activities should materially reduce the number of idle inmates, help solve difficult disciplinary problems, and promote a rehabilitation program for which the average warden now has only one answer, viz: - a constantly diminishing industrial program.

RECOMMENDATION NO. 7

The Committee's recommendation (7) that "the remaining state, county and city institutions now producing for the open market be brought under the Prison Compact" is in accord with action already taken by the PLA. It awaits only the approval of the NRA and the local institutions affected.

APPENDIX H

A PLAN WHEREBY THE FEDERAL GOVERNMENT MAY ASSIST THE SEVERAL STATES TO ABOLISH UNFAIR COMPETITION IN PRISON INDUSTRIES.

1. In the main the purposes sought to be accomplished by the reports of the so-called Ulman Committee and the Prison Labor Authority to the National Recovery Administration and approved by the National Industrial Recovery Board for the solution of the problem of prison labor in the States, have my approval.

2. Any State which by legislation or otherwise shall permanently adopt an adequate State-use prison labor system, or shall give reliable assurance of its immediate intention so to do, may apply for a grant from the Federal Emergency Administration of Public Works under clause "G" of Section 1 of the Emergency Relief Appropriation Act of 1935.

3. After an adequate survey[1] and subject to the provisions of law and the fundamental principles established under Executive Order 7034, and upon conformity with other regulations of the Federal Emergency Administration of Public Works, a grant may be made of a sum sufficient to provide for the necessary expense of changing the existing prison labor system in any given State over to the State-use system.

4. During the transition period and for not to exceed two years, the Federal Emergency Relief Administration and other government agencies may purchase garments and textile goods from State penal institutions, provided the sale of these goods is withdrawn from the open market.

5. The Executive Director of the Federal Emergency Administration of Public Works shall consider in each case whether such grant shall be made available upon application of the State government[2] and shall determine whether the fundamental principles are being followed and what amounts, if any, should be advanced by the Federal Government.

6. The Executive Director of the Federal Emergency Administration of Public Works in order to determine whether the applying State has met the special conditions laid down in paragraph two of this memorandum may appoint an advisory committee to inquire into the facts in each case and advise him whether or not such State has substantially conformed its prison labor system to the State-use principle. Such advisory committee might consist of -- one member appointed by the National Recovery Administration, one by the Prison Labor Authority, one appointed by the American Federation of Labor, one appointed by the United States Chamber of Commerce and one by the Department of Justice.

7. This memorandum is intended merely to give general approval to the principle of assisting State governments who desire to do so to install State-use prison industry systems and is not intended to give approval to any particular project.

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[1]Such survey may provide employment for a considerable number of "white collar" workers.

[2]While it is understood that State Governments are to initiate such projects, the Prison Labor Authority or Bureau of Prisons might conveniently serve as a coordinating or standard setting agency.

APPENDIX I

July 23, 1935.

To Prentiss Coonley

From Linton M. Collins

For over a hundred years. there has been an aggressive warfare against production of goods for the open market by prison labor. There is a realization and universal admission that prisoners must work. However, the feeling has generally been that the other man's fields should be reserved where there is to be any competition between prison labor and free labor. In the dilemma with which prison officials have been confronted, there has of necessity, been a resort to manufacturing operations and this has chiefly been done by contractors who have exploited prison labor. The industry most affected by this has been the cotton garment. Their organized warfare has been more intense than that of any other industry bordering, at times, on guerilla tactics.

After the passage of the National Industrial Recovery Act, the cotton garment industry thought that they had found an opportunity to sound the deathknell to their great bug-a-boo, and than henceforth the codes should outlaw any production by forced labor. In spite of the demand of the cotton garment interests for control of this problem, and the threat that they would not submit to a code unless the prisons did also, it was recognized that the state prisons could not be subjected to a code. However, a provision was incorporated in the Cotton Garment Code affecting prison labor and more particularly in the Code of Fair Competition for the Retail Trade which was approved prior to the Cotton Garment Code as follows:

> "Pending the formulation of a compact or code between the several states of the United States to insure the manufacture and sale of prison-made goods on a fair competitive basis with goods not so produced, the following provisions of this Section will be stayed for ninety (90) days, or further at the discretion of the Administrator:
>
> "(1) Where any penal, reformatory or correctional institution, either by subscribing to the code or compact hereinbefore referred to, or by a binding agreement of any other nature, satisfies the Administrator that merchandise produced in such institution or by the inmates thereof will not be sold except upon a fair competitive basis with similar merchandise produced in such institution or by the inmates thereof will not be sold except upon a fair competitive basis with similar merchandise not so produced, the provisions of paragraph (2) hereof shall not apply

to any merchandise produced in such manner in the institutions covered by such agreement.

"(2) Except as provided in the foregoing paragraph, no retailer shall knowingly buy or contract to buy any merchandise produced in whole or in part in a penal, reformatory or correctional institution. After May 31, 1934, no retailer shall knowingly sell or offer for sale such merchandise. Nothing in this Section, however, shall affect contracts, which the retailer does not have the option to cancel, made with respect to such merchandise before the approval of this contract by the President of the United States."

The prison interests were not derelict in a desire to meet this. As early as July, 1933, the American Prison Association called a meeting to which representatives of the penal institutions or boards of a number of states went, and at which time they adopted a resolution that for their manufacture, they present a Code of Fair Competition. Even though these interests were alert, it was determined that legally the states could not be subjected to a code and after many conferences a voluntary agreement was decided upon which resolved itself into the Compact of Fair Competition for the Prison Industries of the United States of America. This was approved by the President on April 19, 1934 and a Prison Labor Authority, consisting of three presidential members representing respectively, labor, industry and consumer, and six representatives of the prisons, selected from their own group was appointed. This Prison Labor Authority organized immediately after its approval and elected Samuel Lewisohn, Chairman, John J. Hannan, Vice-Chairman and James V. Bennett, Executive Secretary. Thereafter, Howard B. Gill was chosen as Executive Officer and Economic Adviser.

First efforts on the part of the Prison Labor Authority were to secure permission to use an NRA label that they might be able to market prison labor goods in accordance with the Compact and meet the prices set by the Cotton Garment Code and the Retail Code. Administrative Order V-2 was approved and later amended by Administrative Order V-3 which granted them a label under date of June 12, 1934. Strict rules and regulations were required for the issuance of these labels. Complaints arising as to misuse were few and were generally corrected upon request of this Administration. There were issued under the two orders from May 15, 1934 to June 1, 1935, a total of 2,815,000 labels for work shirts and a total of 2,195,600 for work pants. So far as we know the only shirts manufactured and placed upon the open market without labels in violation of the Compact were some made in Florida and in Indiana.

The Prison Labor Authority's first program was to diversify industries in the prisons of the country. The results of this can easily be seen in the manufacture of cotton garments. Prior to the National Recovery Administration, there were eighteen states producing cotton garments for the open market. During the Calendar year of 1932, there were 21,850,876 work shirts and 8,096,947 work pants manufactured in

prisons and sold on the open market. Since the Compact of Fair Competition this has been narrowed down to ten states, of which Delaware, Florida, Indiana, Maryland, Michigan, Missouri, Oklahoma, Tennessee and West Virginia manufacture work shirts and work pants and South Carolina manufactures underwear. During 1934 there were produced in the prisons of the above-mentioned states 2,811,172 work shirts and 3,247,620 work pants. In the free market, and under the Cotton Garment Code Authority, there were produced in 1934 59,657,000 work shirts. The prison production of 2,811,172 is 4.5% of the total production for the United States. This contrasts with an estimated production in prisons during 1932 of 25%. Under the Cotton Garment Code Authority, there were produced in 1934 74,592,000 work pants. The prison production for 1934 of 3,247,620 is 4.2% of the total production for the open market. These decreases evidence the present competition as being decidedly in the decline. In 1932 there were 13,948 prisoners used by the eighteen states in manufacturing cotton garments for the open market. The total number of prisoners now being used on cotton garments in the ten states mentioned above is 3,049.

In the fall of 1934, the President imposed a thirty-six hour week upon the cotton garment industry. Immediately, the Prison Labor Authority advised all prisons manufacturing cotton garments that in accordance with Article II of the Compact, each prison must not operate its cotton garment industries in excess of thirty-six hours. So far as we know this was met by every prison in the country. Nevertheless, the cotton garment industry continued to complain about the intolerable burden imposed upon them by competition from the Prison industries. The Hotchkiss Committee was appointed to make investigations as to whether or not the industry could stand the thirty-six hour week. This Committee recommended that the President appoint a committee to make a very definite study of the competition of products of the cotton garment industry with products of prison labor.

In accordance therewith, the President on October 12, 1934, appointed the Ulman Committee, composed of Judge Joseph N. Ulman, as Chairman, Frank Tannenbaum and W. Jett Lauck. Mr. Lauck was a member of the Hotchkiss Committee. The sum and substance of the recommendations of the Ulman Committee are that fifty million dollars be set aside for the purpose of helping the states to replan and reorganize their prison industries, remove prison made goods from the open market and bring to an end the prison labor controversy which has burdened American industrial and political life for over a century. While this program was being developed, after adequate surveys were made, it was recommended that the Federal Emergency Relief Administration purchase and use such prison made garments as were then being made in prisons and immediately relieve the open market of this competition. Several conferences were held with the FERA officials and it was tentatively agreed that such a program could be developed as far as that end of the program was concerned.

Nevertheless, the prison group answered the recommendations of the Ulman Committee, urging, first, that adequate state use laws be made compulsory before any relief or aid be granted to the respective

states and that a corporation be set up to make an adequate survey of the needs of the respective states before any permanent program was undertaken and that in the meantime it be a condition precedent to the granting of Federal aid that limitations be set for the sale of products on the open market by prisons and that a certain program be worked out through the FERA, using unemployed and preventing other idleness to penitentiaries.

The prisons of this country are engaged in some sixty industries, a list of which is attached, but the competition is negligible except in the cotton garment field which under the Compact has been reduced to an almost negligible figure, and in the binder twine industry, the furniture industry, and the marking device industry and the farm machinery industry.

Thirty-one states and the District of Columbia have signed the Compact. Cooperation of the part of the prison officials was much greater than was anticipated.

The National Industrial Recovery Board on May 27 adopted the following resolution in connection with the prison program.

"1. The desirability of utilizing approximately $50,000,000 of the relief fund to enable the states completely to replan and reorganize their prison industries and prison welfare activities, remove prison-made goods from the open market through diversification for state use, and finally bring to an end the prison labor controversy which has so long burdened American industrial and political life. To this end it will at once suggest to the President.

"(a) The desirability of establishing an agency, properly representative of the interests concerned, to coordinate and supervise this work.

"(b) The desirability of at once placing the Division of Research and Planning of N.R.A. in charge of the necessary survey. (The survey should be under way within a week).

"2. The desirability in the interim between the present and the time when the reorganization of the prison industries can be effected by the use of the fund suggested above of having the Federal Emergency Relief Administration effect the purchase from the prisons of prison-made garments and other products or arrange for the labor now employed on prison-made garments to be utilized to made other garments for such purchase. The purchase of these garments by the Federal Emergency Relief Administration from the state prisons should be scheduled on a declining scale, and should ceas at the end of two years.

"3. The desirability of establishing by cooperation between the National Industrial Recovery Board, the Prison Labor Authority, and the Code Authorities affected, a quota system for all prison industries.

"4. In the meantime the question of an appropriate label for any goods going in to the open market will be reexamined by the N.R.A."

The next steps to be taken in this matter are presentation of the Board's action to the President and an ascertainment from him as to whether or not he desires this program to be pushed. If so, it will be necessary to set up an agency to carry out this program. While this is being done, it is felt certain that the relief of the cotton garment industry can be obtained through relief with the FERA. It has been estimated that such a program could utilize at least 420 white collar relief workers in making the necessary surveys, and based on estimates by the Ulman Committee, if the various projects anticipated are approved in the thirty or forty states now manufacturing prison products, they should, by the spring of 1936, provide work for approximately 7,000 workmen making materials and equipments and for 7,500 construction workmen in the rebuilding of prisons and the setting up of adequate machinery for the purpose of meeting the contemplated program for the diversification of industry. In other words, the $50,000,000 to be allotted as follows: $25,000,000 to be used for equipment, materials, representing the labor of 5,000 industrial workers and $25,000,000 to be used for construction, of which $15,000,000 represents labor for 7,500 workmen and $10,000,000 represents the material for 2,000 industrial workers. Altogether, this program can provide work for at least one year for approximately 2,000 white collar workers and 15,000 construction workers and set in operation the means of reorganizing the prison program in line with the Report of the Ulman Committee. It is estimated that if the Prison Industries Reorganization Administration is set up that possible $1,000,000 can cover the expense of the surveys and the Administration.

There is attached a copy of the Compact of Fair Competition for the Prison Industries of the United States of America, the Report of the Committee on Competition of Products of Cotton Garment Industry with Products of Prison Labor as Directed by Executive Order No. 118-135 of October 12, 1934, better known as the Ulman Committee Report, the Comments of the Prison Labor Authority on the Report of the Ulman Committee, a copy of the Prepared Statement on the Prison Labor Compact prepared for the Senate Finance Committee, a copy of the memorandum on the history of prison products prepared for Mr. Hamilton by Mr. James Porter Davis, a copy of the memorandum of May 29 with a copy of the Executive Order creating the Prison Industries Reorganization Administration, which was forwarded to you, a copy of the memorandum of April 18 sent to Dr. Marshall, and a copy of a Plan to Effectuate the Recommendations of the Ulman Committee Re Prison Competition.

I should appreciate your returning these memorandums after you have read them, so that we may have them in our file.

9742 LINTON F. COLLINS

APPENDIX J

EXECUTIVE ORDER NO. 7194

"ESTABLISHMENT OF THE PRISON INDUSTRIES REORGANIZATION

"ADMINISTRATION

"By virtue of and pursuant to the authority vested in me by the Emergency Relief Appropriation Act of 1935, approved April 8, 1935 (Public Resolution No. 11, 74th Congress), I hereby establish an agency within the Government to be known as the 'Prison Industries Reorganization Administration'.

"The governing body of said Prison Industries Reorganization Administration shall be a Prison Industries Reorganization Board consisting of five members to be hereafter appointed by the President and to hold office at his pleasure. The Prison Industries Reorganization Board is hereby authorized to prescribe such rules and regulations and to delegate to its agents and representatives such powers as, in its discretion, it shall deem necessary and proper for the performance of the duties and functions of the Prison Industries Reorganization Administration and for effectuating the purposes of this Order.

"I hereby prescribe the following duties and functions of the said Prison Industries Reorganization Administration:

"(1) In cooperation with the proper authorities of the several States and the political subdivisions thereof and the District of Columbia:

"(a) To conduct surveys, studies, and investigations of the industrial operations and allied activities carried on by the several penal and correctional institutions of the States and political subdivisions thereof and the District of Columbia, and the actual and potential markets for products of such industrial operations and activities.

"(b) To initiate, formulate, and recommend for approval of the President a program of projects with respect to replanning and reorganizing the existing prison industries systems and allied prison activities of the several State and political subdivisions thereof and the District of Columbia to the end that the industrial operations and activities of such institutions may be so reorganized as to relieve private industry and labor of any undue burden of competition between the products of private industry with the products of such institutions; and to eliminate idleness and to provide an adequate and humane system of rehabilitation for the inmates of such institutions.

"(2) To recommend for the approval of the President loans or grants, or both, to the several States and political subdivisions thereof and the District of Columbia necessary to accomplish the purposes of this Order, and to administer and supervise the program of projects approved by the President.

"In the performance of such duties and functions the Prison Industries Reorganization Board is hereby authorized to employ the services and means mentioned in subdivision (a) of section 3 of the said Emergency Relief Appropriation Act of 1935, to the extent therein provided, and, within the limitations prescribed by said section, to exercise the authority with respect to personnel conferred by subdivision (b) thereof.

"The acquisition of articles, materials, and supplies for use in carrying out any project authorized by this Executive Order shall be subject to the provisions of Title III of the Treasury and Post Office Appropriation Act, fiscal year 1934 (47 Stat. 1489, 1520).

"For administrative expenses of the Prison Industries Reorganization Administration there is hereby allocated to the Administration from the appropriation made by the Emergency Relief Appropriation Act of 1935 the sum of $100,000. Separate allocations will be made hereafter for each of the authorized activities as may be needed.

FRANKLIN D. ROOSEVELT"

THE WHITE HOUSE,

September 26, 1935.

APPENDIX K

NRA
Legal Division

Tuesday
December 4, 1934

MEMORANDUM

TO: Jack Garrett Scott, Associate Counsel

FROM: Peter Seitz, Assistant Counsel

SUBJECT: Prison Labor Compact

The discussion in this report relates to the three recommendations contained in the excerpt from the agenda of the Board, dated December 3, 1934, and marked respectively (c), (d) and (f).

I. As to recommendation "(c)".

The Prison Labor Authority is not created by a code of fair competition. It owes its existence to the provisions of a Prison Labor Compact. With respect to the Prison Labor Compact the following observations must be made.

(A) CONGRESS HAS NOT CONSENTED TO THE COMPACT. Article I, Section 10, Clause 3 of the Constitution reads in part as follows:

"No State shall, without the consent of Congress, **** enter into any Agreement or Compact with another State, or, with a foreign Power ****."

(B) IT IS DOUBTFUL WHETHER CONGRESS MAY DELEGATE ITS POWER TO SO CONSENT. The Supreme Court has upheld delegations of power by Congress to the Executive to make rules and regulations in furtherance of congressional legislation enacted under certain general powers given to Congress, such as those contained in the Commerce Clause. I know of no theory or precedent which would support a delegation of authority to the President to consent to State Compacts. In holding delegation of legislative power valid, the Courts lean heavily upon the theory that the necessities of the case require that legislative details be filled in by administrative officers (J. W. Hampton & Co., vs. U. S. 276, U.S. 394). This reasoning would not obtain in a situation where the simple consent of Congress is required.

(C) THE NIRA DOES NOT CONTAIN A DELEGATION OF POWERS TO GIVE CONGRESSIONAL CONSENT TO A STATE COMPACT. The President's Order approving the Prison Labor Compact refers to the National Recovery Act as authority for so doing. Assuming (without conceding) that a delegation of authority to assent to State Compacts may be made to the President by Congress, it has not been made under the National Industrial Recovery Administration. Section 4-a of Title I of the NIRA provides that:

> "The President is authorized to ******* approve voluntary agreements between and among, persons engaged in a trade or industry, labor organizations, and trade or industrial organizations, associations, or groups relating to any trade or industry, *****".

Let us assume further that the States engaged in Prison industries are persons or groups within that meaning of Section 4-a; but is the Compact an agreement within that Section? Section 7-a reads as follows:

> "Every code of Fair Competition, agreement and license approved, prescribed, or issued under this title shall contain the following conditions: (1) That employees shall have the right to organize and bargain collectively ******". etc.

Obviously a compact relating to the regulation of Prison industries cannot contain the provisions set forth in Section 8-a, required in all agreements which may be approved under Title I of the Act. In my opinion this Section must be read in connection with and as a limitation upon Section 4-a. In other words the agreements, which the President may approve under Section 4-a, are those which contain provisions set out in Section 7-2. The present compact contains no such provisions. The conclusion must follow that the NIRA cannot be relied upon as a basis for the authority of the President (delegated by Congress) to approve the Compact.

(D) THE PRISON LABOR COMPACT MAY NOT HAVE BEEN PROPERLY EXECUTED AND IS THEREFORE NOT BINDING UPON ALL OF THE STATES SIGNATORY THERETO. In my opinion a State would not be bound to a compact signed by

State officers unless the Constitution of such State contained a clause authorizing such a signature or there were supporting and ratifying State legislation. The Prison Labor Compact was, in most instances, signed by State Commissioners of Prisons, Wardens and Chairmen of Prison Boards. In some instances the Governor signed for the State. In some cases the Governor approved the signature of the Warden of the Prison Board. In only one case (Kentucky) has there been State legislation ratifying the compact.

There has been no survey made of the Laws of each signatory State, but until such a study is made, it should be borne in mind that the signatures to the compacts were probably made without the authority, and may not be binding upon the several States.

Conslusion as to "I".

The Prison Labor Compact as a legal instrument is unenforceable in the Courts. It represents merely a declaration of voluntary cooperation by the State prisons with the Federal Government's Recovery Program. This is not meant to mean that a valid compact could not be made covering the subject matter dealt with by the Prison Labor Compact.

The Prison Labor Authority exists by virtue of Article VII of the Compact in the same manner as code authorities exist by virtue of the provisions of codes of fair competition which deal with administrative machinery. If, as is argued herein, the Compact has no legal validity, the Prison Labor Authority, likewise, has no legal basis for existence. Its only powers are those contained in Article VII of the Compact.

II. As to recommendation (d).

The recommendation has two aspects: Legal and Economic.

(A) The Legal Aspect.

The National Industrial Recovery Board cannot "require an agreement" between the Prison Labor Authority and the respective free industry code authorities. The National Industrial Recovery Board only has those powers delegated to it by Executive Orders of the President under the National Industrial Recovery Act or otherwise where such power exists in the President. It has already been indicated that the NIRA is inapplicable to the Prison Labor

situation. I do not know of any provisions in the Constitution or any other statutory authority vesting the President with the power to legislate concerning the manner in which sovereign states may conduct their prison industries.

The Prison Labor Authority, moreover, has no power to change the compact. Article V and Article VII, section 1 (d) of the Compact set forth the price practices and terms which shall constitute the fair competitive standards required of prisons. Any departure from these provisions would require an amendment to the Compact which, of necessity, would require the consent of each individual signatory State thereto.

Assuming that this can be and will be done, the problem of enforcement will still be unanswered. If a State refuses to enter into an agreement such as recommended by the Committee concerning a change of price, or if it violates the provisions of the Compact in any other particular, the only legal recourse would be a suit in the Supreme Court by another State for breach of the Compact. It is unlikely that such a suit would ever be maintained inasmuch as the States, in the operation of their prison industries, are very closely bound together in mutual self-interest against the free industry groups which they believe are hostile to them. A suit could not be maintained by any individual or free industry Code Authority against the State because of the provisions of the eleventh Amendment to the Constitution. It is respectfully submitted that in the absence of adequate enforcement machinery no purpose would be served by agreements such as recommended by the Committee.

(B) The Economic Aspect.

It has been represented to me by representatives of the Prison Labor Authority and others that the motivating purpose behind the actions of the several states in signing the compact was the use of the NRA label. The use of such label was considered to legitimatize an industry which has been subject to social boycott and industrial attack over a period of years, and became necessary because of the boycott provisions of Article IX, Section 3 of the Retail Trade Code. The recommendations of the Committee include a recommendation that the label be denied prison industries or be modified so as to indicate that the product was manufactured in a prison. The latter alternative of modification is unacceptable to the prisons because it enables free industries to carry on what they

deem to be an unjustified boycott against its products. The removal of the label, in my opinion, would eliminate any reason for the prison industries restricting themselves further by the provisions of the unenforceable compact. The quid pro quo will have been removed. Rather than limit themselves to prices established by such agreements as the Committee suggest, it is my guess that they will utilize their large capital investment in machinery to produce, sell and distribute at their will and pleasure, free of the restrictions of standards of fair competition thereby creating an enforcement and compliance problem which may be beyond the power of the Administration to control.

III. As to recommendation "(F)".

The Prison Labor Authority has informed Division 8 that numerous prisons desire to avail themselves of the benefits of the Prison Labor Compact (The use of labels) and to subject themselves to the restrictions thereof, but are unable to do so because of one of the following reasons: (a) The State in which the prison is located has not signed the compact because of some legal obstacle; or (b) the State in which the prison is located has signed the compact but such prisons are not subject to the control or under the supervision of the State.

It is desired to extend the benefits of the compact only where the prison concerned competed upon a fair basis with free industries, and upon the terms set forth in the compact. Individuals cannot sign the compact, but they can sign pledges agreeing to conform to the competitive standards established in the compact in the same manner as sheltered workshops may sign pledges agreeing to conform with the provisions of the code covering the industry in which they are engaged and thereby entitle themselves to labels.

A proposed Administrative Order was returned by the Review Division with the comment that an Executive Order would be more appropriate. It was deemed wisest to defer further action upon the application until the decisions of the Board upon the general subject of Prison Labor and the retention of the Prison Compact was announced. If the Prison Labor Compact is continued in its present form, the proposed Order, in my opinion, should be prepared, submitted and signed.

IV. General Conclusions.

I trust that I am not too presumptious in advancing these conclusions, without which I do not feel this report is complete.

A. The compact is unenforceable legally, but it is most desirable that it be retained upon a voluntary basis because it is the only means of inducing prison industries to compete with free industries upon a fair basis. The only consideration which will induce the prison industries to compete upon such a basis is permission by the Administration to use the NRA label. If this permission is denied the States will not allow their manufacturing plants to remain idle but will employ them upon a competitive basis with free industries, thereby aggravating and augmenting compliance problems, especially in the Retail Trade.

B. As far as I can determine the only complaints made against the compact to date were on the ground of ineffective administration. If this be so, it would be wise to retain the compact and make its administrative and enforcement machinery more effective. The alternative, which is scrapping the Compact, means uncontrolled competition.

Peter Seitz
Assistant Counsel

SUPPLEMENT TO APPENDIX K

NRA
Legal Division

December 7, 1934

MEMORANDUM

TO: Jack Garrett Scott, Associate Counsel

FROM: Peter Seitz, Assistant Counsel

SUBJECT: Prison Labor

I believe the following observations should be made to supplement my memorandum to you dated December 4, 1934.

I. My previous memorandum dealt solely with the existing situation in the prison industry field as controlled by

(a) the Prison Labor Compact
(b) the Hawes-Cooper Act (Copy of the Act extracted from the United States Code Annotated is annexed)

II. In determining the final solution of the prison-free industry competition problem, we should consider the possibility of Federal control of the sale of prison made goods through new Federal legislation.

A. Under the Hawes-Cooper Act divesting prison made goods of their interstate character no administrative control of the situation is possible without new legislation because

(1) The NIRA is general in application; the Hawes-Cooper Act is specific in its treatment of prison made goods. Hence rules of statutory construction would favor the Hawes-Cooper Act as paramount in the field.

(2) The Hawes-Cooper Act has the effect of nullifying the Commerce Clause of the Constitution insofar as prison made goods are concerned. It constitutes a revesting of jurisdiction over this subject in the States. If there is no interstate commerce in prison made goods, there is no basis for the exercise of Federal jurisdiction. I know of no other clause in

the Constitution upon which Federal power can be predicted. The recommendations of the Ulman Committee must be considered with this in mind.

B. New legislation having the effect of cancelling the Hawes-Cooper Act and of revesting the Federal Government with jurisdiction over interstate commerce in prison made goods may form a basis for the solution of the problem along the following lines.

(1) The activity of States in selling prison made goods in interstate markets in competition with free manufacturers in other States, for profit, may be considered to be a proprietary function of the State as distinguished from a governmental function. Where a State engages in a proprietary function her armor of sovereignty is no protection to the exercise of federal power. See Ohio vs. Helvering (1934) 54 Sup. Ct. 725, as to Federal exercise of the tax power when a State through its agency goes into the business of selling liquor. The Court said

> "If a State chooses to go into a business of buying and selling commodities its right to do so may be conceded so far as the Federal Constitution is concerned; but the exercise of the right is not the performance of a governmental function,***. When a State enters the market place seeking customers, it divests itself of its quasi sovereignty pro tanto, and takes on the character of a trader, so far at least as the taxing power of the Federal Government is concerned."

What is true of the Taxing Power must be true of the Commerce Power, and the Federal Government should be able to supervise interstate commerce in prison made goods if the Hawes-Cooper Act is repealed.

C. The political possibility of obtaining legislation to supplant the Hawes-Cooper Act is doubtful in my opinion and should be carefully explored.

Peter Seitz
Assistant Counsel

APPENDIX L

Information Re:- Sumners - Ashurst Act with States

The following points have been raised by various prison officials and others in re the new Federal Act relative to prison industries, and the conclusions set forth appear to be in line with the general concensus of opinion relative to the Act.

(1) The shipper will be liable under the Act if he ships any prison products into any of the following 23 states except as indicated:

Arizona
Except farm products
California
Except jute and hemp bags
Colorado
Idaho
Illinois
Except agricultural limestone
Kansas
Except tags or markers, twine, farm products
Maine
Massachusetts
Michigan
Except binder twine, rope and cordage. Effective Nov. 22, 1935.
Montana
Except certain repair parts for farm machinery.
Nebraska
Except farm supplies, machinery and equipment. Effective September 1, 1935.
New Hampshire
New Jersey
New York
North Carolina
Except farm products, coal and chert.
Ohio
Oregon
Except flax
Pennsylvania
Rhode Island
Texas
Utah
Virginia
Washington

When shipping any of the exceptions noted under (1) into another state, the shipper must be governed by the provisions set forth in (2).

(2) The shipper will be liable when shipping prison products into the following states unless he marks the package containing prison products with name and address of (a) shipper; (b) consignee; (c) prison where made; and (d) nature of contents.

Alabama
Alaska
Arkansas
Connecticut
Delaware
District of Columbia
Florida
Georgia
Hawaii
Indiana
Iowa
Kentucky
Louisiana
Maryland
Minnesota
Mississippi
Missouri
Nevada
New Mexico
Oklahoma
North Dakota
Philippine Islands
Porto Rico
South Carolina
South Dakota
Tennessee
Vermont
Virgin Islands
West Virginia
Wisconsin
Wyoming

(3) The shipper will be liable unless he also labels each article of prison products as required when making shipments into the following states:

California	Iowa	South Dakota
Indiana	Kentucky	Wisconsin
Georgia	New Mexico	Minnesota

OPEN MARKET SALE OF PRISON PRODUCTS PROHIBITED

The following states prohibit the sale of prison-made products within their borders except as indicated.

ARIZONA
Except farm products
CALIFORNIA
Except jute and hemp bags
COLORADO
IDAHO
ILLINOIS
Except agricultural limestone
KANSAS
Except tags or markers, twine farm products
*MAINE
MASSACHUSETTS
MICHIGAN
Except binder twine, rope and cordage. Effective Nov. 22, 1935.
MONTANA
Except certain repair parts for farm machinery.
NEBRASKA
Except farm supplies, machinery and equipment. Effective September 1, 1935.
NEW HAMPSHIRE
*NEW JERSEY
NEW YORK
NORTH CAROLINA
Except farm products, coal and chert
OHIO
OREGON
Except flax
PENNSYLVANIA
RHODE ISLAND
TEXAS
UTAH
*VIRGINIA
WASHINGTON

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* New Jersey, Virginia and Maine prohibit the sale of prison products of other states on the open market but permit the sale of prison products made in their own states within their own borders. It is a question whether such laws are constitutional and hence enforceable. A recent Wisconsin court decision appears to support this view (See Wis. v. Whitfield 257 N.W. 601).

In Georgia and the District of Columbia the manufacture of prison products is confined to state-use, but there are no laws restricting the sale of prison products on the open market in either. The same is true in Nevada and New Mexico where very small amounts of prison products, if any, are made for sale on the open market.

LABELS REQUIRED ON PRISON PRODUCTS

California and Kentucky have laws which require labels, etc. on prison products from other states, but as these laws do not apply to prison products made in California and Kentucky, they are probably unconstitutional and unenforceable.

Indiana, Iowa, New Jersey, New Mexico, South Dakota, Georgia, Minnesota and Wisconsin require prison products to be labeled "Convict-Made". Iowa, Minnesota and New Jersey require the year and name of prison and Wisconsin the name of prison only to be added. Indiana requires a license fee of $500 and a bond of $5000 from vendors of prison products.

APPENDIX M

U.S. DEPARTMENT OF LABOR

Bureau of Labor Statistics
Washington

December 5, 1935

Mr. Clark,
National Recovery Administration,
Room 4023, Commerce Building
Washington, D. C.

Dear Mr. Clark:

In accordance with your telephonic request, I am listing below the States which have, up to December 4th, accepted provisions of the Hawes-Cooper Act.

Arizona
Arkansas
California
Colorado
Idaho
Illinois
Indiana
Iowa
Kansas
Maine
Massachusetts
Michigan
Minnesota
Mississippi
Montana
Nebraska
New Hampshire
New Jersey
New York
North Carolina
Ohio
Oregon
Pennsylvania
Rhode Island
South Dakota
Texas
Utah
Virginia
Washington

Very truly yours,

(S) Herman B. Byer

Herman B. Byer, Chief,
Division of Construction & Public Employment

OFFICE OF THE NATIONAL RECOVERY ADMINISTRATION
THE DIVISION OF REVIEW

THE WORK OF THE DIVISION OF REVIEW

Executive Order No. 7075, dated June 15, 1935, established the Division of Review of the National Recovery Administration. The pertinent part of the Executive Order reads thus:

> The Division of Review shall assemble, analyze, and report upon the statistical information and records of experience of the operations of the various trades and industries heretofore subject to codes of fair competition, shall study the effects of such codes upon trade, industrial and labor conditions in general, and other related matters, shall make available for the protection and promotion of the public interest an adequate review of the effects of the Administration of Title I of the National Industrial Recovery Act, and the principles and policies put into effect thereunder, and shall otherwise aid the President in carrying out his functions under the said Title. I hereby appoint Leon C. Marshall, Director of the Division of Review.

The study sections set up in the Division of Review covered these areas: industry studies, foreign trade studies, labor studies, trade practice studies, statistical studies, legal studies, administration studies, miscellaneous studies, and the writing of code histories. The materials which were produced by these sections are indicated below.

Except for the Code Histories, all items mentioned below are scheduled to be in mimeographed form by April 1, 1936.

THE CODE HISTORIES

The Code Histories are documented accounts of the formation and administration of the codes. They contain the definition of the industry and the principal products thereof; the classes of members in the industry; the history of code formation including an account of the sponsoring organizations, the conferences, negotiations and hearings which were held, and the activities in connection with obtaining approval of the code; the history of the administration of the code, covering the organization and operation of the code authority. the difficulties encountered in administration, the extent of compliance or non-compliance, and the general success or lack of success of the code; and an analysis of the operation of code provisions dealing with wages, hours, trade practices, and other provisions. These and other matters are canvassed not only in terms of the materials to be found in the files, but also in terms of the experiences of the deputies and others concerned with code formation and administration.

The Code Histories, (including histories of certain NRA units or agencies) are not mimeographed. They are to be turned over to the Department of Commerce in typewritten form. All told, approximately eight hundred and fifty (850) histories will be completed. This number includes all of the approved codes and some of the unapproved codes. (In Work Materials No 18, Contents of Code Histries, will be found the outline which governed the preparation of Code Histories.)

(In the case of all approved codes and also in the case of some codes not carried to final approval, there are in NRA files further materials on industries. Particularly worthy of mention are the Volumes I, II and III which constitute the material officially submitted to the President in support of the recommendation for approval of each code. These volumes

set forth the origination of the code, the sponsoring group, the evidence advanced to support the proposal, the report of the Division of Research and Planning on the industry, the recommendations of the various Advisory Boards, certain types of official correspondence, the transcript of the formal hearing, and other pertinent matter. There is also much official information relating to amendments, interpretations, exemptions, and other rulings. The materials mentioned in this paragraph were of course not a part of the work of the Division of Review.)

THE WORK MATERIALS SERIES

In the work of the Division of Review a considerable number of studies and compilations of data (other than those noted below in the Evidence Studies Series and the Statistical Material Series) have been made. These are listed below, grouped according to the character of the material. (In Work Materials No. 17, Tentative Outlines and Summaries of Studies in Process, these materials are fully described).

Industry Studies

Automobile Industry, An Economic Survey of
Bituminous Coal Industry under Free Competition and Code Regulation, Economic Survey of
Electrical Manufacturing Industry, The
Fertilizer Industry, The
Fishery Industry and the Fishery Codes
Fishermen and Fishing Craft, Earnings of
Foreign Trade under the National Industrial Recovery Act
- Part A - Competitive Position of the United States in International Trade 1927-29 through 1934.
- Part B - Section 3 (e) of NIRA and its administration.
- Part C - Imports and Importing under NRA Codes.
- Part D - Exports and Exporting under NRA Codes.

Forest Products Industries, Foreign Trade Study of the
Iron and Steel Industry, The
Knitting Industries, The
Leather and Shoe Industries, The
Lumber and Timber Products Industry, Economic Problems of the
Men's Clothing Industry, The
Millinery Industry, The
Motion Picture Industry, The
Migration of Industry, The: The Shift of Twenty-Five Needle Trades From New York State, 1926 to 1934
National Labor Income by Months, 1929-35
Paper Industry, The
Production, Prices, Employment and Payrolls in Industry, Agriculture and Railway Transportation, January 1923, to date
Retail Trades Study, The
Rubber Industry Study, The
Textile Industry in the United Kingdom, France, Germany, Italy, and Japan
Textile Yarns and Fabrics
Tobacco Industry, The
Wholesale Trades Study, The
Women's Neckwear and Scarf Industry, Financial and Labor Data on

Women's Apparel Industry, Some Aspects of the

Trade Practice Studies

Commodities, Information Concerning: A Study of NRA and Related Experiences in Control
Distribution, Manufacturers' Control of: Trade Practice Provisions in Selected NRA Codes
Distributive Relations in the Asbestos Industry
Design Piracy: The Problem and Its Treatment Under NRA Codes
Electrical Mfg. Industry: Price Filing Study
Fertilizer Industry: Price Filing Study
Geographical Price Relations Under Codes of Fair Competition, Control of
Minimum Price Regulation Under Codes of Fair Competition
Multiple Basing Point System in the Lime Industry: Operation of the
Price Control in the Coffee Industry
Price Filing Under NRA Codes
Production Control in the Ice Industry
Production Control, Case Studies in
Resale Price Maintenance Legislation in the United States
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Agreements Under Sections 4(a) and 7(b) of the NIRA
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Part C. Activities of the Code Authorities
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Relationship of NRA to Government Contracts and Contracts Involving the Use of Government Funds
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Uncodified Industries: A Study of Factors Limiting the Code Making Program

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Collective Bargaining Agreements, the Right of Individual Employees to Enforce
Commerce Clause, Federal Regulation of the Employer-Employee Relationship Under the
Delegation of Power, Certain Phases of the Principle of, with Reference to Federal Industrial Regulatory Legislation
Enforcement, Extra-Judicial Methods of
Federal Regulation through the Joint Employment of the Power of Taxation and the Spending Power
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Intrastate Activities Which so Affect Interstate Commerce as to Bring them Under the Commerce Clause, Cases on
Legislative Possibilities of the State Constitutions
Post Office and Post Road Power -- Can it be Used as a Means of Federal Industrial Regulation?
State Recovery Legislation in Aid of Federal Recovery Legislation History and Analysis
Tariff Rates to Secure Proper Standards of Wages and Hours, the Possibility of Variation in
Trade Practices and the Anti-Trust Laws
Treaty Making Power of the United States
War Power, Can it be Used as a Means of Federal Regulation of Child Labor?

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THE EVIDENCE STUDIES SERIES

The Evidence Studies were originally undertaken to gather material for pending court cases. After the Schechter decision the project was continued in order to assemble data for use in connection with the studies of the Division of Review. The data are particularly concerned with the nature, size and operations of the industry; and with the relation of the industry to interstate commerce. The industries covered by the Evidence Studies account for more than one-half of the total number of workers under codes. The list of those studies follows:

Automobile Manufacturing Industry
Automotive Parts and Equipment Industry
Baking Industry
Boot and Shoe Manufacturing Industry
Bottled Soft Drink Industry
Builders' Supplies Industry
Canning Industry
Chemical Manufacturing Industry
Cigar Manufacturing Industry
Coat and Suit Industry
Construction Industry
Cotton Garment Industry
Dress Manufacturing Industry
Electrical Contracting Industry
Electrical Manufacturing Industry
Fabricated Metal Products Mfg. and Metal Finishing and Metal Coating Industry
Fishery Industry
Furniture Manufacturing Industry
General Contractors Industry
Graphic Arts Industry
Gray Iron Foundry Industry
Hosiery Industry
Infant's and Children's Wear Industry
Iron and Steel Industry
Leather Industry
Lumber and Timber Products Industry
Mason Contractors Industry
Men's Clothing Industry
Motion Picture Industry
Motor Vehicle Retailing Trade
Needlework Industry of Puerto Rico
Painting and Paperhanging Industry
Photo Engraving Industry
Plumbing Contracting Industry
Retail Lumber Industry
Retail Trade Industry
Retail Tire and Battery Trade Industry
Rubber Manufacturing Industry
Rubber Tire Manufacturing Industry
Shipbuilding Industry
Silk Textile Industry
Structural Clay Products Industry
Throwing Industry
Trucking Industry
Waste Materials Industry
Wholesale and Retail Food Industry
Wholesale Fresh Fruit and Vegetable Industry
Wool Textile Industry

THE STATISTICAL MATERIALS SERIES

This series is supplementary to the Evidence Studies Series. The reports include data on establishments, firms, employment, Payrolls, wages, hours, production capacities, shipments, sales, consumption, stocks, prices, material costs, failures, exports and imports. They also include notes on the principal qualifications that should be observed in using the data, the technical methods employed, and the applicability of the material to the study of the industries concerned. The following numbers appear in the series:
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Asphalt Shingle and Roofing Industry
Business Furniture
Candy Manufacturing Industry
Carpet and Rug Industry
Cement Industry
Cleaning and Dyeing Trade
Coffee Industry
Copper and Brass Mill Products Industry
Cotton Textile Industry
Electrical Manufacturing Industry
Fertilizer Industry
Funeral Supply Industry
Glass Container Industry
Ice Manufacturing Industry
Knitted Outerwear Industry
Paint, Varnish, and Lacquer, Mfg. Industry
Plumbing Fixtures Industry
Rayon and Synthetic Yarn Producing Industry
Salt Producing Industry

THE COVERAGE

The original, and approved, plan of the Division of Review contemplated resources sufficient (a) to prepare some 1200 histories of codes and NRA units or agencies, (b) to consolidate and index the NRA files containing some 40,000,000 pieces, (c) to engage in extensive field work, (d) to secure much aid from established statistical agencies of government, (e) to assemble a considerable number of experts in various fields, (f) to conduct approximately 25% more studies than are listed above, and (g) to prepare a comprehensive summary report.

Because of reductions made in personnel and in use of outside experts, limitation of access to field work and research agencies, and lack of jurisdiction over files, the projected plan was necessarily curtailed. The most serious curtailments were the omission of the comprehensive summary report; the dropping of certain studies and the reduction in the coverage of other studies; and the abandonment of the consolidation and indexing of the files. Fortunately, there is reason to hope that the files may yet be cared for under other auspices.

Notwithstanding these limitations, if the files are ultimately consolidated and indexed the exploration of the NRA materials will have been sufficient to make them accessible and highly useful. They constitute the largest and richest single body of information concerning the problems and operations of industry ever assembled in any nation.

L. C. Marshall,
Director, Division of Review.

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